

**EARLY IBĀDĪ JURISPRUDENCE:
THE LETTERS OF
ĠĀBIR IBN ZAYD AL-AZDĪ
(21–93 AH/641–711 CE)**

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Abstract

Correspondence offers privileged access to the social, political, and religious discourses in the formative phase of the schools of Islam. The letters of Ġābir ibn Zayd, who was to become one of the founding figures of the Ibāḍiyya, held a prominent position in the community life of his followers. This study, an edition and translation of the letters of Ġābir ibn Zayd, will serve to clarify and complete the historical record, at the same time highlighting their author's unique contribution to the development of an Ibāḍi school of jurisprudence.

Though attempts have been made to edit and interpret the fatwas included in Ġābir's letters, this thesis for the first time presents them in a complete edition with translation and commentary. Further, the present work is based on three manuscripts rather than the single one known earlier. Only after an extended search could the two additional manuscripts of Ġābir's letters be retrieved from private libraries. After carefully examining and comparing the differences, the present thesis offers a comprehensive edition of the letters which shall, it is hoped, assist future studies focusing on jurisprudence in early Islam.

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Note on Transliteration

The transliteration adopted in the present work is according to DIN¹ standard:

Letter	DIN	Letter	DIN
ء	'	ظ	ẓ
ا	a	ع	'
ب	b	غ	Ġ
ت	t	ف	F
ث	ṭ	ق	Q
ج	ǧ	ك	K
ح	ḥ	ل	L
خ	ḫ	م	M
د	d	ن	N
ذ	ḍ	ه	H
ر	r	و	w; ū
ز	z	ي	y; ī
س	s	آ	'ā
ش	š	ة	h; t
ص	ṣ	ى	Ā
ض	ḍ		
ط	ṭ		

¹ Deutsches Institut für Normung (DIN) standard for the transliteration of the Arabic alphabet adopted in 1982. It is based on the rules of the Deutsche Morgenländische Gesellschaft (DMG) as modified by the International Orientalist Congress 1935 in Rome.

Introduction

After the death of the Prophet (11 AH/632 CE), a schism was developing in the Muslim community. The tribal systems in Arabia were influenced by competing schools of thought, with early religious leaders garnering support from different quarters and acquiring influence. It was a time of turmoil, *fitna*, and the records which survive to this day of these first theologians help explain the development and evolution of Islam.

Witnesses to these early developments include Ğābir ibn Zayd, born in ‘Umān in 21 AH/641 CE. In his childhood and early adulthood, he witnessed major events that shaped the Muslim community forever: assassination of ‘Umar (23 AH/644 CE); ‘Uṭmān and ‘Alī facing a civil war (24-35 AH/645-656 CE); the Umayyads being challenged by uprisings in Baṣra and elsewhere.

Ğābir ibn Zayd, an Imām who lived in Baṣra in the first Islamic century, rose to prominence in the Islamic community due to his knowledge acquired through years of study and travel and his erudition, honed through discourse with the leading thinkers of his age. His opinions and pronouncements are documented in his correspondence. For centuries, the exchange of letters had a prominent position in Ibāḏī² community life. They were passed on from generation to generation and have become important historical sources. Correspondence held a prominent position in Ibāḏī life, and the letters exchanged reveal early social, political and religious activities which have only recently been recognized as pertaining specifically to Ibāḏī history.

This author checked a range of biographies, history books and relevant studies and found a good number of letters that require special attention and comprehensive study. In general, these letters have not been used as much as they should have. Some researchers

²Lewicki 1971: 648a-660b.

have made studies based upon these letters, but they do not reflect the letters' full significance.

It is worth mentioning that such letters provide for historians and jurists a source of biography, presenting them the ideas, visions and opinions of the era regarding a certain topic or an event. They may be writings or replies or an exchange of views amongst scholars to explain or analyze a certain matter, or they may be a recording of events and news of the day. They sometimes include information about famous Imāms, scholars and jurists, thus providing valuable biographical data. In addition, they include an abundance of juridical opinions and are referred to in a large number of resources and manuscripts which need to be collected and thoroughly studied.

1. The Rediscovery and the Processing of the Letters of Ġābir ibn Zayd

The person who rediscovered and imparted the significance of these letters in the modern era was ‘Amr Ḥalīfa an-Nāmī³. Many scholars in the Arab world and beyond depend on his work. An-Nāmī has been absent from the scientific field since 1986, the year he disappeared after a long struggle in prison and with the Libyan regime at the time.

An-Nāmī tracked down many manuscripts during the preparation of his doctoral thesis on al-Ibāḍīya at the University of Cambridge in 1968. His academic supervisor for this purpose was Professor R. B. Serjeant. An-Nāmī conducted a research tour visiting Nafūsa Mountains in Libya, Djerba (Tunisia) and Wadī Mzāb in Algeria. He entered into correspondence with Omani scholars, among them Muḥammad ibn ‘Abdallāh as-Salīmī (d. 1985), his son Sulaymān (d. 2001), Salīm ibn Ḥamad al-Ḥārṭī (d. 2006), Ġālīb ibn ‘Ali al-Hinā’ī (d. 2010), and Aḥmad al-Ḥalīlī (the current Grand muftī of the Sultanate of Oman). Evidently, an-Nāmī focused on obtaining and analysing Ibāḍī manuscripts.

In 1970, he published a summary of his findings in the *Journal of Semitic Studies*.⁴ Within the scope of the paper, an-Nāmī delivered a detailed description of the letters of Ġābir ibn Zayd which he considered to be among the most important Ibāḍī manuscripts. In his article, an-Nāmī also made reference to another copy of the letters which to his knowledge was in the possession of Ṣālīḥ ibn ‘Umar in Beni Yazgan in Mzāb. Since he was not able to obtain them, he did not give any further details.

An-Nāmī began analyzing the letters he had found in 1969, typing copies of them including annotations on a typewriter. While he

³ A number of books has been published about an-Nāmī. One was written by his friend, Maḥmūd Muḥammad an-Nākū‘, published in London 2006, and another one by the Omani researcher Sultān Mubārak aš-Šaybānī, published in Muscat 2008.

⁴ an-Nāmī 1970: 63-87.

realised that his collection of them was not complete, Ğābir's letters constituted an essential element in his thesis *Studies in Ibādism* (Cambridge, 1971). He related his concern in editing the manuscripts in a letter addressed to Abu l-Yaqḍān Ibrāhīm ibn 'Īsā (d.1973) in which he said: "I have completed so far transcribing the letters of Imām Ğābir ibn Zayd on the typewriter using an old poor version, and I will print several copies to send to you for correction, because there were some words which were very difficult to decipher. I know that there is a copy in the library of Šāliḥ ibn 'Umar; perhaps one of you will have the opportunity to inspect that version. Mine will be sent to you within a fortnight, God willing."⁵ Among scholars who were interested in Ibādī issues, the discovery of the manuscripts was followed with great interest and aroused attention – in Europe even more than in the Islamic world itself. As a consequence of an-Nāmī's publication, multiple studies were produced that treated Ibādism and Ibādī issues. At the same time, a scientific dispute began over the authenticity of these manuscripts and – for those accepting their credibility – on the ways of benefiting from them.

Perhaps the fact that an-Nāmī's research was first published in English was the reason that Europe became the incubator of Ibādī studies. The impact of his work only reached Arab and especially Omani readers with some delay. With the growing attention of Orientalists worldwide for early Islam, an-Nāmī's transmission of these sources opened up additional space for academic discussion on issues regarding that period. While it cannot be claimed that the manuscripts published by an-Nāmī can give conclusive answers to pivotal questions in the history of Islamic sects, they at least lead to new proposals in this regard.

Examples of European scholars' interest in these early sources are John Wilkinson who wrote about manuscripts in the early history of Oman and in the Omani Imāmate⁶, and the studies of Michael

⁵ aš-Šaybānī 2008: 15-24.

⁶ Wilkinson 1978: 191-208.

Cook, particularly those with regard to Ibādī *siyar*, as well as the studies of Martin Hinds about internal conflicts in the early beginnings of Islam.⁷

Another important example of European interest is that of Fritz Zimmermann and Patricia Crone in their study *The Epistle of Sālim ibn Dhakwān*, printed in 2001, and notable for its text editing and analysis. In this context, it needs to be mentioned that Sālim ibn Dhakwān corresponded directly with Ġābir ibn Zayd in the eleventh letter. Obviously, Zimmermann and Crone did not have access to Ġābir's letters, at least not to the letter of Ġābir to Sālim ibn Dhakwān, for if they had had such access, they certainly would have included the information that relates to Sālim's biography. Instead, they only mention the comments an-Nāmī gives in his thesis.⁸

The publication of the an-Nāmī article also aroused researchers' interest in Ibādī manuscripts in Germany. In 1974, Prof. van Ess traveled to Djerba, Tunisia, and Wadi Mzāb in Algeria. He started collecting Ibādī manuscripts and then published a summary of his findings,⁹ in which he also pointed to the importance and historical value of Ġābir ibn Zaid's letters. He described them accurately and kept copies of the manuscripts in the Institute of Oriental Studies at the University of Tübingen.

In the Seventies, 'Awad Ḥalīfāt was likewise concerned with Ibādī manuscripts, since he was preparing a book on the origins and emergence of the Ibādī movement and its role in Islamic history. He benefited from what had been written in the articles of an-Nāmī and van Ess. In 1977, when 'Awad was in Britain, he read a copy of the letters of Ġābir ibn Zayd, purportedly from Djerba in Tunisia, lent to him temporarily by one of his friends.¹⁰

⁷ Cook 1981: 37; Hinds 1978: 41.

⁸ Crone, Zimmermann 2001: 302-303.

⁹ van Ess 1976: 25-63.

¹⁰ Ḥalīfāt 2002: 24.

In 1981 Ṣāliḥ ibn Aḥmad as-Sawwāfi wrote his Master thesis on Ḡābir ibn Zayd at al-Azhar University in Egypt,¹¹ based on information he gleaned from a copy of the manuscript in the Islamic Library in Ruwī, Muscat, noting that the manuscript had been photocopied from another library in the United Kingdom under the number 9192-216c, but without mentioning any further details.

In 1981 Michael Cook published a book entitled *Early Muslim Dogma*¹², in which he focussed on the biography of Sālim ibn Ḍakwān and the letters of Ibn Ibāḍ to ‘Abd al-Malik ibn Marwān. He also mentioned the importance of Ḡābir’s letters, but it appears that he had not seen the letters themselves, reporting only on what had been written about them by an-Nāmī and van Ess.

Years later, Sāmī Ṣaqr from Jordan investigated the whereabouts of these letters when he was researching for his Master thesis on Ḡābir ibn Zayd.¹³ He traveled to Tunisia where he was able to have access to the letters at the Bārūnīya library. He referred to the poor conditions of these letters, how they were damaged, and the need to care for them. Ṣaqr offered an accurate description of the manuscripts, and, just as an-Nāmī before him, pointed to the possibility of another copy in the library of Ṣāliḥ ibn ‘Umar in Beni Yazgan in Mzāb. But the existence of this copy was put in question by one Farḥāt al-Ḡa‘birī who had catalogued the contents of the library.¹⁴

Discussing the ḥāriḡī movement, Nāsir ibn Sulaimān as-Sāb‘ī in his book *al-Ḥawāriḡ wa-l-ḥaqīqa al-ḡā’yba*¹⁵ uses Ḡābir ibn Zayd’s letters as one of his sources. Nāsir states that he cited copies which one Sāmī Ṣaqr had acquired from the Library of Sālim ibn Ya‘qūb in Djerba, Tunisia. This author, however, is of the opinion that Sāmī Ṣaqr had obtained these copies from the Bārūnīya Library, as stated in the introduction of his research, and not from the Sālim ibn Ya‘qūb

¹¹ as-Sawwafī 1997: 63-65.

¹² Cook 1981: 37.

¹³ as-Ṣaqr 2002: 17-25.

¹⁴ al-Ḡa‘birī 2002.

¹⁵ as-Sāb‘ī 2003: 31.

Library. This raises a question which will be addressed later: Is it another version or is it an oversight of as-Sāb‘ī?

In 1991 Mūna Nağğār submitted her Master’s thesis at the University of Tübingen, analyzing one of Ğābir ibn Zayd’s letters (the one addressed to al-Ĥārīṭ ibn ‘Amr) for language, content, religious pronouncements, etc. In spite of the importance of her work, she relied solely on the copy obtained by van Ess at the Bārūnīya Library. A further verification of the authenticity of the letters or a critical comparison was not undertaken in this case.¹⁶

In 1999, Muṣṭafa Šāliḥ Bāğū prepared his thesis on *al-Iğtihād ‘inda l-Ibādīya*¹⁷ at the Amīr‘Abd al-Qādir-University of the Islamic Sciences in Algeria. It was printed in the Sultanate of Oman in 2005.

Bāğū attempted to rely solely on primary sources of Ibādī jurisprudence. However, he confused the letters of Ğābir ibn Zayd with the book *Ğawābāt Ğābir ibn Zayd* in discussing the views of van Ess. In fact, Bāğū did not see the manuscript copies of the letters, but built his argumentation on the typed version, as he pointed out himself. He mentioned that there are only seventeen (!) letters, and that he had obtained this copy from the Dār al-Kutub al-Miṣrīya under the number 21582 b.

In 2002, Farḥāt al- Ğa‘birī was determined to study and analyze the letters. In the introduction to his paper dealing with the letters, he stresses the importance of a scientific analysis and the exact reading of the letters’ contents, as well as an examination of the authenticity of the original manuscripts.¹⁸ Since he did manage to secure copies of the letters from the library of Šāliḥ ibn ‘Umar, some progress was achieved regarding the issues he mentioned. However, Farḥāt is convinced that this version of the manuscript is a copy of the one in the Bārūnīya Library, which is not the case.

¹⁶ Nağğār 1991.

¹⁷ B‘ayū 2005: 29.

¹⁸ al-Ğa‘birī 2002.

In the same year, i.e., in 2002, the Italian scholar Francesca Ersilia published her doctoral thesis ‘Teoria e pratica del commercio nell’ Islām medievale – I contratti di vendita e di commenda nel diritto ibādīta’. Her work is important in that she uses the letters of Ğābir ibn Zayd as one of her basic sources.¹⁹ She benefited from the copy in the possession of Werner Schwartz, the famous collector of Ibādī scripts based in Göttingen.

Researchers in Oman received another typewritten copy of Ğābir’s letters which were stored in the Islamic Library in Ruwī. The provenance of this version is unknown; most probably it is from the correspondences of an-Nāmī to his friends in Oman.

Several studies in Oman that have discussed Ğābir ibn Zayd’s letters relied on this non-edited typewritten version, although it only contained sixteen of the eighteen letters. The last two letters – sent to ‘Abd al-Malik ibn al-Muhallab and Ḥayra bint Ḍamra – were missing. The publications that are based upon this incomplete version include the study *Ğābir ibn Zayd, ḥayāt min aġl al-‘ilm* by Aḥmad Darwīš (Oman, 1988), and the book *al-Ḥayāt al-fikrīya fī ‘Umān* by Zayd al-Ğahḍamī (Oman, 1999).

In 2002, the efforts of the “Ğam‘īyat at-Turāt” – a group of dedicated researchers in Algeria that focused on exploring and indexing early Ibādī manuscripts – finally paid off. They found a copy of the letters of Ğābir ibn Zayd in the library of Šālīḥ ibn ‘Umar. It is evident that this must be the version that was referred to by an-Nāmī in his letter to Abu l-Yaqzān in 1973. By this time, 33 years had passed since an-Nāmī’s initial discovery in 1969.

In 2003, Muštafā ibn Muḥammad ibn Idrīsu from Algeria published the book *Al-Fikr al-‘Aqadī ‘inda l-Ibādīya ḥattā niḥāyat al-qarn at-tālīḥ al-ḥiġrī*.²⁰ In it, he briefly noted that there are two copies of Ğābir’s letters in the library of Šālīḥ ibn ‘Umar without adding any other information.

¹⁹ Ersilia 2002: 232.

²⁰ Ibn Idrīsu 2003: 52.

In 2004 and later, it was learned that some researchers of the “Ġam‘īyat at-Turāṭ” in Algeria started to edit the letters and complete what was begun by Farḥāt al-Ġa‘birī. To date, they have not completed their project.

In 2005, in a meeting with Prof. Josef van Ess in the Institute of Oriental Studies, University of Tübingen, and in consultation with him about the focus of this research, further inquiries were begun. These included direct personal examination and the editing of the letters of Ġābir ibn Zayd. Van Ess himself opened the box which contained the letters and permitted copies to be made. These are currently in the author’s possession.

This overview makes it clear that the road of discovery of Ġābir’ letters has been a long one. It began half a century ago. And it ended with the discovery of a third version, which will be highlighted later in this study.

Based on the discoveries mentioned above, following extensive correspondence and personal contacts to the libraries, copies of three versions of Ġābir’s letters are finally in the possession of this author. The first is the same one as that of an-Nāmī and van Ess from the Bārūnīya Library in Djerba, Tunisia. The two others stem from the library of Šāliḥ ibn ‘Umar in Wadi Mzāb, Algeria. These last two versions have not yet been studied by other researchers. al- Ġa‘birī, who was the first to see one of them, was convinced that it was a copy of the Bārūnīya version. As the present work will make clear, this assumption is not valid.

After a careful examination of each of these versions, it is apparent that the copy from the Bārūnīya Library is older and, as pointed out by an-Nāmī, may well have originated in the 7th/13th century, perhaps even before that. The dating is based on the style of the handwriting, which is medieval Maġribī. It does resemble samples of Eastern writers, especially those of Oman. Scholars specialized in the field of manuscripts have confirmed to this author that this type of writing goes back to the 7th/13th centuries, as an-Nāmī had assumed

previously.²¹ The features of the paper used as well as the type of the leather applied for the binding together permit such an inference. It needs to be kept in mind that the Bārūnīya version comprises only sixteen letters, with some of the pages damaged and text fragments missing.

The other two copies that were archived at the Library of Ṣāliḥ ibn ‘Umar in Mzāb go back to the 14th/19th centuries. There is clarity in the arrangement, the writing style and materials. Both of the Mzābī versions contain all eighteen letters, including those two which are missing in the Bārūnīya version. Both present the letters in the same order.

It is unlikely that the Mzābī manuscripts were copied from the Bārūnīya version as Farḥāt al-Ġa‘birī believes for the following reasons: (1) The letters in the Bārūnīya manuscript are on loose pages and in no particular order; the Mzābī manuscripts are continuous and in the same order. (2) The Bārūnīya manuscript has been damaged in places, and some fragments are missing. The missing text is complete in the Mzābī manuscripts. (3) Furthermore, there are discrepancies in the texts. Their phrasing is not consistent, and it is unlikely that the copyist (*nāsīḥ*) would have changed it.

There is another point to be made here: a careful comparison of the two Mzābī manuscripts also reveals discrepancies between the two which may indicate that one of these copies had been derived from another – as yet unidentified – manuscript.

²¹ Interview with ‘Alī ibn ‘Abdallāh al-Hārṭī, Director of the Department of Manuscripts and Documents, the Ministry of Heritage and Culture, Sultanate of Oman, 15th April 2006.

1.1 Collecting Ğābir ibn Zayd's Letters

It is not possible to specify who collected these letters as the available transcripts, studies and reports on research do not address this point. Ğābir ibn Zayd himself asked to keep the letters secret and hidden from the rulers of his age. The letters must have been collected from different countries, — Oman, Khorasan — and from different people, or by one of Ğābir ibn Zayd's pupils who was close to him and who had close relations with the recipients.

The recipients were instructed by Ğābir ibn Zayd himself to destroy the letters as soon as they had been read. However, the recipients did not do so in the case of these letters, which were kept safe by those who received them. The addressees are not likely to have copied the letter themselves, but retained them to share with those they most trusted. It might have been subsequent readers who were the first to copy them. This would have happened in limited and discreet circles, which may explain why the letters are rarely found in old manuscripts and not referred to more often despite their significance in terms of knowledge.

This author believes that the letters must have been collected by either ʔumām ibn as-Sā'ib or Abū 'Ubayda Muslim ibn Abī Karīma. The biographies of these individuals show that they had strong relations with Ğābir ibn Zayd and that they were determined to pass on and transmit their knowledge.

ʔumām ibn as-Sā'ib (d. 150 AH)

ʔumām ibn as-Sā'ib was a favourite pupil of Ğābir ibn Zayd. His contemporaries called him “the Transmitter (*rāwī*)” of Ğābir. He passed on many juristic issues addressed by his teacher. Although Abū 'Ubayda was knowledgeable and a well-recognized figure in this field, he used to refer his questioners to ʔumām in recognition of the latter's superior knowledge.

Ḍumām ibn as-Sā'ib was an Azdī from Oman. He and Abū 'Ubayda were jailed by al-Ḥaḡḡāḡ ibn Yūsuf²² due to their involvement with the organization led by Ḡābir. According to aš-Šammāḡī (d. 928/1522), Ḍumām “was a man of knowledge, exploration and solving knowledge-related dilemmas”.²³

Ḍumām ibn as-Sā'ib used to write down the teachings (*riwāyāt*) of Ḡābir ibn Zayd which were compiled in a book later known as *Riwāyāt Ḍumām ibn al-Sā'ib*, composed by Abū Ṣufra 'Abd al-Malik ibn Ṣufra.²⁴

Ḍumām is mentioned by Yaḡyā ibn Ma'īn (233/848) in his *Tārīḡ*²⁵ in two subjects, namely: Vol. 2, p. 157 (No. 3940), and Vol. 2, p. 268 (No. 4723). He is also mentioned in ad-Dawlābī's (d. 310/922) *al-Kunā wa-l-asmā'*.²⁶

Ḍumām ibn as-Sā'ib was one of the sheikhs of ar-Rabī' ibn Ḥabīb. Ar-Rabī' quoted from Ḍumām Hadith ((*Hadith*) No. 520 from Ḡābir ibn Zayd. He also transmitted two Hadith, namely No. 112 and No. 688 from Ḡābir ibn Zayd as recorded by Abū 'Ubayda.²⁷

Abū 'Ubayda Muslim ibn Abī Karīma (d. 150 AH)

Abū 'Ubayda Muslim ibn Abī Karīma is said to be of Persian origin. He is regarded as the second founder of al-Ibādīya after Ḡābir ibn Zayd. Abū 'Ubayda was also concerned with the transmission of knowledge. Most of the narrations that ar-Rabī' ibn Ḥabīb cites had been transmitted through Abū 'Ubayda and Ḡābir ibn Zayd.

Abū 'Ubayda was known for his interest in political issues. As is reported in chronicles, he taught his pupils in Baṣra secretly in a remote storage room, and when the group suspected an Umayyad loyalist to be approaching, they pretended to be busy making baskets.

²² Dietrich 1971: 39b-43a.

²³ aš-Šammāḡī 1987: 45.

²⁴ an-Nāmī 1970: 63-87.

²⁵ Ibn Ma'īn 1979: 272

²⁶ ad-Dūlābī 2000: 879.

²⁷ ar-Rabī' 2011: 30.

Many scholars, who later became top scholars of their age, learnt from him. Under his leadership, the development of the Ibādī doctrine as well as the movement itself witnessed rapid dissemination.²⁸

He composed the famous letter on *az-zakāt* in reply to Ismā‘īl ibn Sulaymān al-Maġribī’s question (d. 150 AH or during the reign of the Abbasid caliph Abū Ğa‘far al-Manṣūr).

In their collection of Ğābir ibn Zayd’s letters, this author believes that Ḍumām and Abū ‘Ubayda were determined to safeguard the knowledge transmitted in these letters, based on the following: (1) The knowledge and leadership status they enjoyed. Both of them were very close to Ğābir ibn Zayd and learned much from him. (2) Both were the successors of Ğābir ibn Zayd in the interpretation of many Ibādī issues concerning the political situation in their time. These letters uncover many aspects of the Ibādī network during that time. Their author is known and considered a threat by the ruling power, and the recipients are high ranking people, either scholars or men with a public office. Given the sensitivity of the political situation during the Umayyad era and Umayyad attitude towards Ibādīs, no other people would dare to retain these letters which posed a great risk to the recipient as well to the collector. (3) These letters may have come into their possession by way of the delegations visiting Abū ‘Ubayda who were spreading knowledge and preparing leaders from different parts of the Muslim communities. These delegations came from Iraq, Oman, Khorasan, Ḥaḍramawt, Yemen, Marocco and al-Ḥiġāz, which also were those Ibādī strongholds Ğābir sent his letters to. Moreover, the delegates were not ordinary scholars, but were chosen and sent to the base of the organization to meet their leader Abū ‘Ubayda. They would then return to their homelands after years of studying, some of them establishing the first Ibādī imamates.

²⁸ Lewicki 1971: 648a-660b.

1.2 Attribution: Are these letters directly attributable to Ğābir?

Taking into account Ğābir ibn Zayd's life, the scope of his relations, his reputation amongst people, and his eagerness with correspondence, the available letters must be but a small portion of his writings. During that time, written correspondence was the usual means for long distance communication, especially by scholars seeking clarification on religious issues. The following evidence of additional correspondence has been found:

1. According to the *Sīra* of Maḥbūb ibn ar-Ruḥayl (d. 207/823) addressed to the people of Ḥaḍramawt concerning Hārūn's issue²⁹, he said: "We came to know that people of Oman had written to Ğābir ibn Zayd asking him [the following...]"³⁰, and that Ğābir ibn Zayd replied to them [the following...]"³¹
2. Ğābir ibn Zayd was reported to have written to "Ikrima about some matters"³².
3. 'Amr ibn Dīnār (d. 126/743) said: "Ğābir ibn Zayd gave me a sheet containing some matters 'Ikrima asked about."³³
4. It was said that Yazīd ibn Abī Muslim (102/720) wrote to Ğābir ibn Zayd: "What is the first ever thing Allāh created?" Ğābir replied in writing: "The Pen of Fate, His Throne, and water. I do not know whichever came first."³⁴ Obviously, Ḥayyān al-A'raġ (d. 111-120/728-737) is referring to the same correspondence: "Yazīd ibn Abī Muslim wrote to Ğābir ibn Zayd asking him about the beginning of creation. Ğābir replied: 'His Throne, water and the Pen of Fate. However, Allāh only knows whichever came first.'"³⁵

²⁹ Kāšif 1986: 305.

³⁰ as-Salimī 2001: 22.

³¹ as-Salimī 2001: 22.

³² Ibn Ḥalfūn 1974: 46.

³³ Ibid.

³⁴ aš-Šammāḥi 2016: 106.

³⁵ al-Bayhaqī 1939: 481. See also: as-Suyūṭī (date n/a): 472.

2. The Manuscripts and Letters

2.1 Description of the Manuscripts

The Tunisian Copy

Regarding the manuscript located in Bārūnīya Library, Djerba, Tunisia, in the category of Fiqh Ibādī under the number 28 entitled *Ağwibat Ğābir ibn Zayd wa-ağwiba uḥrā*, its description is as follows:

- Number of pages: 32 pages.
- Number of lines: 24 on each page.
- Size of the manuscript: 25 x 21 cm.
- Style of the handwriting: medieval Mağribī handwriting
- Date of the copy: undated

In this version, which was viewed by an-Nāmī, van Ess and Şaqr, there are sixteen letters from Ğābir ibn Zayd. Some of the letters are not correctly ordered and parts of the texts have been mispositioned or are lost. The garbled texts present a puzzle in which the reader can only hazard a guess as to which blocks of text are out of place and where they should correctly follow. Only seldom does the context help. It is only with the paradigm of the other versions that the order of the texts in the Bārūnīya version can be ascertained with any degree of certainty.

Examples of some of the discrepancies

In the first line of the copy of Ğābir’s letters (page 64 according to the modern numbering of the manuscript, right-hand column) it says: “In the name of God the Merciful, may Allāh bless our Prophet Muḥammad and his family and companions, from Ğābir ibn Zayd to Rāšid ibn Ḥayṭam (...).”

And then at the bottom of the same page (p. 64 – right-hand column): “And you ask us (...)” which is not consistent with the beginning of page 64 – left-hand column: “And I ask him (...)”. The bottom of page 64 – right-hand column is damaged and the text is missing.

The next discrepancy in this same letter to Rāšid ibn Ḥayṭam is found in the bottom of page 64, left-hand column, which continues on page 74, left-hand column, then jumps to page 72, left-hand column, and then jumps back to page 46, left-hand column, where the letter ends, to be followed by the beginning of the letter from Ġābir ibn Zayd to ‘Uṭmān ibn Yasār. On page 75, left-hand column, there is a strikethrough mark crossing the page, with a remark at the top of and again along the side of the page: “this page is void”.

The order of the letters from this version are as follows:

1. The first letter: to Rāšid ibn Ḥayṭam, beginning on page 64, right-hand column, then continuing on page 74, left-hand column, then to page 72, left-hand column, and finally finishing on page 46, left-hand column.
2. The second letter: to ‘Uṭmān ibn Yasār. The beginning of the letter is missing from this version, but the ending is found on page 65, right-hand column.
3. The third letter: to Ṭarīf ibn Ḥulayd, begins on the page 65, right-hand column, and ends on page 67, right-hand column.
4. The fourth letter: to Ġaṭrīf ibn ‘Abd ar-Raḥmān, from page 67, right and left-hand columns.
5. The fifth letter: to al-Ḥārīṭ ibn ‘Amr, starting on page 67, left-hand column, ending on page 68, left-hand column.
6. The sixth letter: to ‘Unayfa, beginning on page 69, right-hand column, and ending on page 70, left-hand column.
7. The seventh letter: to Nāfi‘ ibn ‘Abdallāh, from page 70, left-hand column, to page 71, right-hand column.
8. The eighth letter: to Yazīd (Zayd) ibn Yasār, from page 71, right-hand column, to page 71, left-hand column.
9. The ninth letter: to ‘Abd al-‘Azīz ibn Sa‘d, from page 71, left-hand column, and then completed on page 73, right-hand column.
10. The tenth letter: to Mālik ibn Usayd, starts on page 73, right-hand column, and ends on page 74, right-hand column.

11. The eleventh letter: to Sālim ibn Ḍakwān, starts on the page 74, right-hand column, and then continues on page 72, left-hand column.
12. The twelfth letter: to Nu‘mān ibn Salama, starting at the top of page 72, left-hand column and ending on the same page.
13. The thirteenth letter: to Nu‘mān ibn Salama, starts at the beginning of the page 72, left-hand column, and is then completed on page 75, right-hand column. Page 75, left-hand column was stricken through by a copyist, as referred to previously.
14. The fourteenth letter: to Ṭarīf ibn Ḥulayd, starts at the beginning of the page 85 and is completed on page 86, left-hand column.
15. The fifteenth letter: to Mālik ibn Usayd, starts on page 86, left-hand column and ends on page 87, right-hand column.
16. The sixteenth letter: to ‘Abd al-Malik ibn al-Muhallab, starts at the top of page 87, left-hand column, but the letter is not completed anywhere in this manuscript.
17. The seventeenth letter: to ‘Abd al-Malik ibn al-Muhallab; it is not extant in this version.
18. The eighteenth letter: to Ḥayra bint Ḍamra; it is not extant in this version.

The Algerian Copy 1

This manuscript is housed in the library of Ṣāliḥ ibn ‘Umar in Wadi Mzāb, Algeria.

- Manuscript No. [129] in the library’s register.
- Number of pages: 32 pages.
- The number of lines: 23 lines.
- Manuscript size: 23.5 x 17.5 cm.
- Style of handwriting: medieval Maḡribī handwriting.
- Copyist (*nāsīḥ*): Sulaymān ibn Muḥammad ibn Idrīsū.
- Dated: 1311/1893.

This copy is completely legible. The sequence of the letters is undisturbed and their content is complete. The text comprises the numbered pages 62 through 97. The order of the letters from this version are as follows:

1. The first letter: to Rāšid ibn Ḥayṭam, from pages 62 to 64.
2. The second letter: to ‘Uṭmān ibn Yasār, pages 64 to 66.
3. The third letter: to Ṭarīf ibn Ḥulayd, from pages 66 to 69.
4. The fourth letter: to Ġaṭrīf ibn ‘Abd ar-Raḥmān, pages 69 to 71.
5. The fifth letter: to al-Ḥārīṭ ibn ‘Amr, pages 71 to 73.
6. The sixth letter: to ‘Unayfa, pages 73 to 77.
7. The seventh letter: to Nāfi‘ ibn ‘Abdallāh, pages 77 and 78.
8. The eighth letter: to Yazīd (Zayd) ibn Yasār, pages 78 and 79.
9. The ninth letter: to ‘Abd al-‘Azīz ibn Sa‘d, pages 79 and 80.
10. The tenth letter: to Mālik ibn Usayd, pages 80 to 82.
11. The eleventh letter: to Sālim ibn Ḍakwān, pages 82 and 83.
12. The twelfth letter: to Nu‘mān ibn Salama, page 83.
13. The thirteenth letter: to Nu‘mān ibn Salama, pages 83 to 86.
14. The fourteenth letter: to Ṭarīf ibn Ḥulayd, pages 86 and 87.
15. The fifteenth letter: to Mālik ibn Usayd, pages 87 to 89.
16. The sixteenth letter: to ‘Abd al-Malik ibn al-Muhallab, pages 89 to 92.
17. The seventeenth letter: to ‘Abd al-Malik ibn al-Muhallab, pages 92 to 95.
18. The eighteenth letter: to Ḥayra bint Ḍamra, pages 95 to 97.

The Algerian Copy 2

This manuscript is found in the library Ġamī‘at aš-Šayḥ Abū Ishāq Itfiš in Banī Yazqin, Algeria.

- Manuscript Number (60) in the library’s register.
- Number of pages: 11 pages.
- Number of lines: 24 on each page.
- Size of the manuscript: 25 x 21 cm.
- Style of handwriting: medieval Maġribī script.

- Date of the Copy: Undated.

It contains these letters:

1. The first letter: to Rāšid ibn Ḥayṭam, beginning of page 104, right-hand column, completed on page 104, left-hand column.
2. The second letter: to ‘Uṭmān ibn Yasār, begins on page 104, left-hand column, and ends on page 105, right-hand column.
3. The third letter: to Nāfi‘ ibn ‘Abdallāh, page 105, right-hand column, to page 105, left-hand column.
4. The fourth letter: to Ṭarīf ibn Ḥulayd, begins on the page 105 left-hand column, and ends on page 106, right-hand column.
5. The fifth letter: to Ġaṭrīf ibn ‘Abd ar-Raḥmān, page 106 right-hand column to page 106, left-hand column.
6. The sixth letter: to Ġaṭrīf ibn ‘Abd ar-Raḥmān, on page 106, left-hand column.
7. The seventh letter: to al-Ḥārīṭ ibn ‘Amr, starting on page 106, left-hand column to page 107, right-hand column.
8. The eighth letter: to ‘Unayfa, on page 107, right-hand column.
9. The ninth letter: to Yazīd (Zayd) ibn Yasār, starting on page 107, right-hand column to 107, left-hand column.
10. The tenth letter: to ‘Abd al-‘Azīz ibn Sa‘d, on page 107, left-hand column.
11. The eleventh letter: to Mālik ibn Usayd, on page 107, left-hand column.
12. The twelfth letter: to Sālim ibn Ḍakwān, starts on the page 107, left-hand column to page 108, right-hand column.
13. The thirteenth letter: to Nu‘mān ibn Salama on page 108, right-hand column.
14. The fourteenth letter: to Mālik starts on the page 108, right and left-hand columns.
15. The fifteenth letter: to ‘Abd al-Malik ibn al-Muhallab, from page 108, left-hand column to page 109, right-hand column.

16. The sixteenth letter: to ‘Abd al-Malik ibn al-Muhallab on page 109, right-hand column.
17. The seventeenth letter: to ‘Abd al-Malik ibn al-Muhallab, pages 92 to 95.
18. The eighteenth letter: to Ḥayra bint Ḍamra, pages 95 to 97.

Unlike the other two manuscripts, this manuscript is a shortened version of the letters of Ḡābir ibn Zayd. It contains only the names of the addressees and the fatwas themselves, omitting the salutation as well as the closing. In some of the letters, a change in the names of the addressees took place: for instance Yazīd ibn Yasār replaced Zayd ibn Yasār. The most important discrepancy is the inconsistency in four of the letters, the fatwas they include, and the people who they were sent to. This applies, compared to the other two manuscripts, to the following letters:

- The fatwas attached to the second letter in this manuscript (to ‘Uṭmān ibn Yasār, beginning on page 104, left-hand column up to page 105, right-hand column) are those attached to the sixth letter in the other two manuscripts: to ‘Unayfa, pages 73 to 77 in the Algerian version, and the sixth letter: to ‘Unayfa, beginning on page 69, right-hand column, and ending on page 70, left-hand column of the Tunisian version.
- The fatwas attached to the third letter: to Nāfi‘ ibn ‘Abdallāh, from page 105, right-hand column to 105, left-hand column are those attached to the second letter in the other manuscripts: To ‘Uṭmān ibn Yasār, pages 64 to 66 in the Algerian version, and to ‘Uṭmān ibn Yasār found on page 65, right-hand column of the Tunisian version.
- The Fatwas attached in this manuscript to the fifth letter: to Ḡaṭrīf ibn ‘Abd ar-Raḥmān, from page 106, right-hand column to page 106, left-hand column, are those attached to the fourteenth letter in the other two manuscripts: To Ṭarīf ibn Ḥulayd, pages 86 to 87 in the Algerian version and to Ṭarīf ibn

Ḥulayd, which starts at the top of the page 85, and is completed on page 86, left-hand column of the Tunisian version.

- The fatwas attached in this manuscript on the eighth letter: to ‘Unayfa, on page 107, right-hand column are those attached to the seventh letter: To Nāfi‘ ibn ‘Abdallāh, pages 77 to 78 of the other Algerian version, and to the seventh letter to: Nāfi‘ b. ‘Abdallāh, from page 70, left-hand column to page 71, right-hand column of the Tunisian version.

Aside from these discrepancies, it can be stated that the contents of the fatwas remain exactly the same as in the other two manuscripts.

2.2 Manuscript Images



Image 1: First and second pages of the manuscript from al-Bārūniya Library, Djerba, Tunisia, category Fiqh Ibādī, Number 28.

2.3 The Structure of Ġābir's Letters

Correspondence in that era conformed to basic outlines. As a result, the author did not deviate from the established formula. All of these letters are similarly structured, not only in terms of outline but also in terms of the terminology and the diction used in the main parts of the letters.

Ġābir's style is the same in all letters. All his letters are divided into the very same parts: salutation, body and closing. Contemporary research on recently discovered Arabic Papyri³⁶ shows that the way of writing letters perfectly matches the one used by Ġābir ibn Zayd. These corresponding epistolographic elements support the theory that the letters date back to the lifetime of Ġābir.

Salutation

1. al-Basmala

In the salutation, the *Basmala* [البسمة] comes at the top of each letter. The *Basmala* is a liturgical verse used as an introduction. This tradition still exists even in our modern age. It is not known whether the *Basmala* was written by Ġābir himself or is an addition made by the copyists. Nevertheless, studies made on the writing of such phrases in letters show that the *Basmala* has been widespread since the time of the Prophet Muḥammad.

Furthermore, all eighteen letters preserved in the three manuscripts use that introductory line. Al-Qurṭubī (d. 671/1273) reported that the entire Muslim community (*umma*) agrees on using the *Basmala* in letters.³⁷ Other scholars added that the *Basmala* was a practice of the previous prophets as well, for instance, the Prophet

³⁶ See Abbott 1938: 42-44.

Grohmann 1960: 5-9.

Grohmann 1938: 19-23.

Bell 1945: 538-539.

Gruendler 1993: 22-23, 167.

Moritz 1905: 102-103.

³⁷ al-Qurṭubī 2006 Vol. 16, 153.

Solomon who wrote to the Queen of Sheba, as in the Qur'ān: (إِنَّهُ مِنْ (سُلَيْمَانَ وَإِنَّهُ بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ).³⁸

According to Ibn 'Aṣūr (d. 1269/1876), Prophet Solomon followed the sunna of Abraham in writing the *Basmala*, and later that tradition was revived by the last Messenger, Muḥammad.³⁹ Ibn Abī Hātim (d. 327/938) related that the Arabs in advance of Islam used to write “bismika allāhuma”⁴⁰. Ibn Kaṭīr (d. 774/1373) mentioned in his *Tafsīr* from Maymūn ibn Mihrān that Muḥammad the Prophet used to write “bismika allāhumma” until this verse of Qur'ān was revealed to him. Thereafter he used it instead.⁴¹

2. Identification of the Sender and the Recipient

In seventeen of eighteen letters following the *Basmala*, Ḡābir wrote “from Ḡābir ibn Zayd to (...).” The only exception is in his letter to 'Abd al-Malik ibn al-Muhallab (Number 16), in which the order is reversed. In his other letter to 'Abd al-Malik ibn al-Muhallab (Number 17), Ḡābir is consistent with the others.

Starting the letter with the sender's name is preferred by most Muslims in classical correspondence. As previously mentioned, an example of this is Solomon's letter to the Queen of Sheba. Other examples include the letters of the Prophet and his successors and followers. Al-Bayhaqī in his *al-Sunan al-kubrā*, based on a report from Ibn Sīrīn, writes that al-'Alā' ibn al-Ḥaḍramī wrote a letter to the Prophet using: “From al-'Alā' ibn al-Ḥaḍramī to Muḥammad (...).” Furthermore, he learned from Salmān al-Fārisī that he had said: “No person is more sacred than the Prophet Muḥammad and the companions used to address him: 'From so-and-so to Muḥammad the Messenger of God.’”⁴² It is most interesting that al-Buḥārī titled a chapter of his *Ṣaḥīḥ* بَابُ بِمَنْ يُبْدَأُ فِي الْكِتَابِ (whose name should be first

³⁸ Qur'ān: (27:31).

³⁹ Ibn 'Aṣūr 1984: 259.

⁴⁰ Ibn Abī Hātim 1997: 2873.

⁴¹ Ibn Kaṭīr 1998, Vol. 6: 170.

⁴² al-Bayhaqī 2004: 220.

mentioned in letters?) and stated that the Prophet told his companions a story of a man who sent a letter to his creditor along with the money. The man began his letter by “from (so-and-so) to (so-and-so).”⁴³ In his *Fath al-Bārī*, Ibn Ḥaḡar al-‘Asqalānī provides a useful discussion about the topic. He concluded that beginning with the sender’s name is a sunna. However, Ibn Ḥaḡar stated that some companions began their letters with the addressee’s name, such as a letter sent by ‘Umar, which opens with ‘To Mu‘āwiya ibn Abī Sufyān’.⁴⁴

3. Greetings

After the names comes the greeting. Ḡābir generally uses “salāmun ‘alaykum” except in two places: (1) in the letter he sent to Yazīd ibn Yasār wherein the greeting comes as a parenthetical clause; (2) in his letter to Sālim ibn Ḍakwān in which Ḡābir used “al-salāmu ‘alaykum”.

Then Ḡābir says after the greeting: “I praise God, besides Whom there is no other God.” In his book *al-Ṭabaqāt*, Ibn Sa‘d reports that Hišām ibn ‘Urwa said that his father did not like to write “salāmun ‘alaykum” and “ammā ba‘d” (now to our subject) unless they are followed by: “I praise God, next to Him there is no other God.”⁴⁵ This shows the importance of using this sentence in classical correspondence.

4. Admonition

Ḡābir ibn Zayd goes on in his introduction by including some religious admonitions and pieces of advice. The advice to fear God (*taqwā Allāh*) appears in every letter; thereafter follows some other aspects, which sometimes cover half of the letter, for instance:

- adherence to faithfulness
- not being deceived by false desires

⁴³ al-Buḡārī 2002: 58.

⁴⁴ al-‘Asqalānī 1957: 48.

⁴⁵ Ibn Sa‘d 1990: 138.

- trusting Allāh
- search for comprehensive forgiveness
- recommendation of perseverance and patience
- accepting *qadr* and *qaḍā'* (fate and destiny) decreed by Allāh
- following the commands of Allāh
- acting in accordance with Allāh's will
- thanking Allāh
- warning of hypocrisy
- Avoidance of religiously suspicious matters.

Then comes the Arabic phrase *ammā ba'd*, which can also be translated as “as to the matter in hand”. In most letters, this is followed by: “We would like to inform you about our circumstances. We are fine.” Then follows the sentence: “I have received your letter.”

Body

The body of the letter is a reply to the questioner, addressing the concerns raised, answering specific questions, and elaborating on religious issues. When Ğābir answers the jurisprudence questions, he uses a certain phrase to start writing about this: “As for the matter you mentioned (...)”, then he replies, giving his opinion. 120 issues are addressed in the letters which are specifically reported in the next sections of this thesis.

Closing

The closing of the letters varies. Some letters end with invocations. Other letters end instructing the recipient to destroy the letter and to keep the contact between them confidential. All letters end with “salāmun ‘alayk”, or “as-salām ‘alayk”, or “as-salāmu ‘alaykum wa-rahmatullāh”. However, there is something missing in all of the copied letters: the date. Letters which belong to that epoch were dated only by the sender. Copies made thereafter were undated.

3. The Significance of Ġābir's Letters

The letters of Ġābir ibn Zayd are ancient Islamic texts which date back to the first Islamic century. They belong to a category of scripts that Nabia Abbott termed as “Historical Texts”, classifying documents as essential to an understanding of their era.⁴⁶ Due to their age, the letters of Ġābir bear particular importance in the field of early Islamic studies. They are essential to those interested in Ibādī jurisprudence.

It is hoped here to shed some light on the significance of these letters. They are one of the key resources that explain the establishment and development of al-Ibādīya, especially with regard to the fact that al-Ibādīya was among the very first Islamic sects to emerge.⁴⁷ The letters discuss early political and religious issues still relevant to a general Islamic community in Baṣra and beyond. But only a few decades later all of the teachings of Ġābir ibn Zayd – including these letters – came to be regarded as essentially and exclusively Ibādī scripts not only by his followers, but also by many disciples of other Islamic schools.

The letters are also useful for the examination of the hidden ways through which ideas were spread in the Umayyad era.⁴⁸ It must be borne in mind that the Umayyads were quite aware of – or quickly learned of – any political activity against their regime. In spite of the repressive efforts, though, some forty years after Ġābir's death independent Ibādī territories were on the rise.⁴⁹

⁴⁶ Abbott 1957.

⁴⁷ When Ġābir ibn Zayd died in 93 AH, Mālik Ibn Anas (the Imām of the Mālikī Fiqh School) was 3 years old. Abū Ḥanīfa (the Imām of the Ḥanafī Fiqh School) was 13 years old. Muḥammad ibn Idrīs aš-Šāfi'ī (the Imām of the Šafi'ī Fiqh School) was born much later, that is in 150 AH. Aḥmad ibn Ḥanbal (the Imām of the Ḥanbalī Fiqh School) was born in 164 AH.

⁴⁸ Hawting 2000: 840a-847b.

⁴⁹ The first Ibādī Imām of Oman, al-Ġulandā ibn Mas'ūd was elected in 132 AH. The first Ibādī Imām in Yemen was 'Abdallāh ibn Yaḥyā al-Kindī appointed around 132 AH. The first Ibādī Imām in Tiyyarat was 'Abdallāh ibn as-Samḥ al-Ma'firī elected in 141 AH. The first Ibādī Imām in Algeria was 'Abd ar-Raḥmān ibn Rustam installed in 161 AH.

Politics was important to Ğābir ibn Zayd, and in his later life he was politically involved in practice. Available texts and different resources shed light on his political involvement, as well as the internal plans of the Umayyad authorities.

3.1 Ğābir ibn Zayd al-Azdī

It should be noted that in his early life, Ğābir ibn Zayd was not known to be among those who rebelled against authority. At the age of twenty, when he could stand the hardships of travel, Ğābir moved from ‘Umān to Baṣra seeking religious knowledge.

Ğābir ibn Zayd was first known as an active player in politics when al-Ḥaġġāġ ibn Yūsuf came to ‘Irāq as a governor of ‘Abd al-Malik ibn Marwān in 75 AH. It was at this time, in the second half of the 1st/7th century, that Ğābir began organizing his followers to follow his own political doctrine.

Although unaware of his relationship with Ibādīs, the Umayyads did know Ğābir as a religious authority. He maintained good relations with al-Ḥaġġāġ ibn Yūsuf through his connection to Yazīd ibn Abī Muslim, the secretary of al-Ḥaġġāġ and close friend of Ğābir. In fact, al-Ḥaġġāġ ibn Yūsuf offered Ğābir a post as judge at the court in Baṣra, presumably to co-opt Ğābir and win his allegiance, but Ğābir did not accept the offer. In spite of that, al-Ḥaġġāġ ibn Yūsuf awarded Ğābir an annual stipend of 600-700 dirhams, which Ğābir ibn Zayd did accept.⁵⁰

Attempting to defend Ğābir’s acceptance of money from the Umayyad rulers, Ibādī authors have suggested that he did so as an act of *taqīya*. This apologetic interpretation however, was put forward out of fear that Ğābir by his act could give legitimacy to the government and support its agenda.⁵¹

⁵⁰ Abū l-Ḥawārī 1985: 276
ad-Darġīnī 1974: 214.

⁵¹ al-Warġilānī 1985: 90.

Another example of Ğābir's relationship with the rulers of Baṣra: Ğābir prayed the Friday Prayer behind 'Ubayd Allāh ibn Ziyād and behind al-Ḥaġġāġ ibn Yūsuf at a time when some scholars were refraining from doing so. Asked about the reason therefore, Ğābir replied: "It is a congregational prayer and an established sunna."⁵²

According to Ibādī sources, Ğābir also showed not only support but also his opposition to al-Ḥaġġāġ. One day he said to al-Ḥaġġāġ: "Prophet Muḥammad said: 'God curses the unjust, their helpers, and those who help their helpers, even by handing them a pen.'"⁵³ He also refused to agree with al-Ḥaġġāġ on the matter of wiping footwear during ablution. "How can I afford to wipe over my footwear whereas Allāh commands me to wash my feet?", Ğābir argued.⁵⁴

Concerned that the authorities may be suspicious of him, Ğābir was cautious when contacting his friends and followers as is clearly seen in his correspondence. In five of his letters he asked the addressee to destroy his letter. In three of them, he gave reasons therefore:

1. In his letter to al-Ḥārīṭ ibn 'Amr, one of the oldest followers of Kūfa, Ğābir wrote: "Please be aware that (...) you are in a province where my name should not be mentioned. Therefore, please, do not report to anybody, anything that I wrote to you!"
2. In his letter to 'Abd al-Malik ibn al-Muhallab, Ğābir wrote: "Let me know in writing what you need, but that must be in secret and through people you trust because you know our situation. We fear those who look for reasons to harm us, so do not run into a risk lest you should cause us to perish. May Allāh set your affairs aright!"
3. In his letter to Ṭarīf ibn Ḥulayd, Ğābir wrote about the rulers (*umarā'*) as follows: "You are well aware of those rulers [i.e.

⁵² Abū Ğābir 1981: 406.

ad-Darġinī 1974: 214.

⁵³ al-Warġilānī 1985: 108.

⁵⁴ Ibn Ḥalfūn 1974: 39.

See also ar-Rabī' 2011: 15-16.

their oppression]. We are afraid of them, as they search for excuses to impose penalties upon us.”

an-Nāmī and others suggest that these examples show that Ğābir was afraid of the rulers so he always acted cautiously. Ğābir’s life shows a rather pragmatic approach in dealing with the Umayyads. However, this did not protect him from persecution at the hands of the Umayyads and even al-Ḥaġġāġ himself. Ğābir ibn Zayd and three other Ibādī leaders were imprisoned in Iraq by al-Ḥaġġāġ, and later Ğābir was exiled to Oman.⁵⁵

3.2 The Founding of al-Ibādīya

Decisive for the development of al-Ibādīya was the rejection of the compromise found between ‘Alī ibn Abī Tālib and Mu‘āwīya I. in 37 AH. The publicly announced deal between the parties that had been fighting for the right to succession eventually led to a fragmentation of the Islamic movement. At the time, Ğābir was most probably still living in Nizwa and – as far as can be known – undecided in the question of legitimate rule. His view obviously changed during his early years in Baṣra, when he met those that objected to the claim of Mu‘āwīya I. to power. Mirdās ibn ‘Udayya at-Tamīmī (d. 61/670) and his followers took refuge in Baṣra at the end of the 40s AH, when Ğābir was in his late twenties.⁵⁶

How close his relation to the secessionist movement soon became is illustrated by the following incidents recorded in Ibādī chronicles. According to aš-Šammāhī⁵⁷, an Ibādī historian, Maḥbūb ibn ar-Ruḥayl⁵⁸, reported that an old man called Abū Sufyān Qanbar (d. 99-101/717-719) from al-Qa‘ada⁵⁹ was arrested by the ruler of

⁵⁵ aš-Šammāhī 1987: 81.

⁵⁶ Ḥalīfa 2002: 90.

⁵⁷ aš-Šammāhī 1987: 104.

⁵⁸ Lewicki 1986: 1230a-1230b.

⁵⁹ The term al-Qa‘ada القعدة derives from the Arabic word (قعد) which means to “sit back” or to remain inactive. They were a group of people in al-Baṣra during the mid-1st century AH whose enemies called them “al-Qa‘ada” because they refused to participate in violent activities against other Muslims, among them was Abū Bilāl Mirdās ibn ‘Udayya at-Tamīmī.

Iraq, ‘Ubayd Allāh ibn Ziyād, and was whipped to force him to give away the whereabouts of one of the leading rebels (i.e., Ğābir), but he did not submit. Ğābir ibn Zayd later commented on the critical situation: “I was near Abū Sufyān, and I expected him to point in my direction, but God held him back.”⁶⁰

Abū Bilāl was a leader of al-Qa‘ada in Baṣra. Some sources confirm that Abū Bilāl did not conduct his activities without consulting Ğābir. The relationship between Ğābir and Abū Bilāl grew firmer and stronger. Abū Bilāl used to meet Ğābir regularly to acquire knowledge from him. According to the narratives, Ğābir started to achieve a reputation as a leader of the movement before the year 61 AH. In that year, Abū Bilāl was killed by Umayyad troupes.⁶¹

In his book *Bayān al-Šar‘*, Muḥammad ibn Ibrāhīm al-Kindī says: “We have been informed that they (i.e., Abū Bilāl Mirdās ibn Ḥudayr and his followers) adhere to the teachings of their Imām in religion Ğābir ibn Zayd al-‘Umānī, and that they attempt to protect him from the effects of war in order to preserve his guidance as well as their own mission”.⁶²

al-Qa‘ada members agreed that Ğābir should take care of and organize their mission in Baṣra. Ğābir’s followers trusted him, believed in his intelligence, and in his broad religious knowledge. Although Ğābir held a position as a leader among al-Qa‘ada from that early time, there is no indication that he participated openly in any political events. The inhabitants of Baṣra did not know that Ğābir was a leader of al-Qa‘ada, or that he was involved in al-Qa‘ada’s activities, because he obviously kept his political convictions secret. His followers helped him do so as they were keen on protecting him from Umayyad authority. Al-Qa‘ada feared that if Ğābir’s involvement with them was discovered by the authorities, it might lead to his

⁶⁰ aš-Šammāḥī 1987: 105.

⁶¹ Morony 1993: 912-913.

⁶² al-Kindī 1987: 55.

execution, and that the Umayyad regime would squelch their movement.

It is also reported that Abū Bilāl and Ğābir ibn Zayd were in close touch during that period and Abū Bilāl used to spend considerable time with Ğābir ibn Zayd. It is reported also that together they visited ‘Ā’iṣa and reproached her for her involvement in the Battle of the Camel.⁶³

Furthermore, Ğābir ibn Zayd entertained strong bonds to another prominent figure of the time: ‘Abdallāh ibn Ibāḍ. Their eye-level relationship was based on common goals and a subversive arrangement regarding a division of labor. ‘Abdallāh ibn Ibāḍ did become the public speaker of the movement, while Ğābir remained in the background. Due to this arrangement, historians later named the movement after ‘Abdallāh ibn Ibāḍ, even though it had been established by Ğābir. Ibn Ibāḍ became especially famous for his strong-worded letters to the Umayyad caliph.

Hinting at a leading role of Ğābir in the relation to ‘Abdallāh ibn Ibāḍ is the chronicler aš-Šammāḥī when he states that “among them (i.e., the early Ibāḍīs) was ‘Abdallāh ibn Ibāḍ (...), who followed the teachings of Ğābir ibn Zayd”.⁶⁴ The arrangement between the two ‘founding fathers’ might have contributed to the assessment of many Sunni scholars that Ğābir did not belong to the Ibāḍī movement, but remained a sunni all his life. The present research in turn follows the judgement of the *Sunni* chronicler Yaḥyā ibn Ma‘īn (d. 233/848) who conclusively stated: “Ğābir ibn Zayd was an *Ibāḍī*.”⁶⁵

Ignaz Goldziher (d. 1921) depicted the Umayyad era as an age of insecurity and injustice⁶⁶. Many Ibāḍī and Shi’a historians agree

⁶³ aš-Šammāḥī 1987: 65
ad-Darġīnī 1974: 206.
See also an-Nāmī 2015: 58-80.

⁶⁴ aš-Šammāḥī 1987: 72.

⁶⁵ Ibn Ma‘īn 1979: Vol. 1, 76.

Ibn ‘Adī 1997: Vol. 4, 71.

Ibn Haġar al-‘Asqalānī 1908: 34. (Sometimes you use only “al-‘Asqalānī”, sometimes the whole name. consistency!)

⁶⁶ Goldziher 2009: 82.

upon this point. The pious scholars of Medina quarreled continuously and experienced frequent hostility as regards the Umayyad rulers. The letters of Ġābir are indicative of the aggressive posture of the Umayyad authorities, which required that Ġābir's followers to meet in secret, in order not to attract the attention of their oppressors. Ġābir even permitted bribery in order to avoid difficulties with the authorities during the rule of 'Ubayd Allāh ibn Ziyād. Qatāda ibn Di'āma as-Sadūsī (d. 117/735) reported that Ġābir ibn Zayd said: "We had no other useful way in that period other than bribery"⁶⁷. It appears from the context of his letters that Ġābir ibn Zayd made pragmatic decisions in order to reach his goals.

The following quotes from the letters shows his discretion:

- (1) Ġābir ibn Zayd wrote to al-Ḥārīt ibn 'Umr: "Be aware that – May Allāh guide you to the right path - I am in a place where I dislike to be mentioned by name. Please, do not share anything I wrote to you."
- (2) Ġābir includes a similar request in his letter to Sālīm ibn Ḍakwān: "Be aware that it will give me relief if every letter you receive from me is destroyed; do not share anything of what I write to you." In the latter case the concern expressed was not about this one letter only. It rather applied to all of the preceding correspondence between them as well. Furthermore, the phrase indicates that they must have exchanged more than the one letter we know of.
- (3) In a letter to Nu'mān ibn Salama, Ġābir talks about his enemies attempting to ambush him without explicitly mentioning their names, and he invokes God against them: "We ask Him (God) to defend us and you against those who are malicious to us, whether human beings or devils (...), and to protect us against them by His Will."

⁶⁷ as-Sadūsī (year n/a), 189.

- (4) In a letter, Ṭarīf ibn Ḥulayd asked Ğābir about his female slave. Ğābir advised him to sell her in a different place so that the Emir would not know about her: “I am intent that if you would like to sell her, you should sell her in a place which is unknown, since you are aware of the evils of our rulers. We are afraid of them. They are trying to inflict harm on us.” In this text, Ğābir ibn Zayd declares that he is watched by the authorities, and explains that he is afraid of them. That is why he orders the addressee to destroy the correspondence between them in order to maintain confidentiality: “After reading my letters, you need to destroy them.”
- (5) In a letter to ‘Abd al-Malik ibn al-Muhallab, Ğābir ibn Zayd orders him to make their mutual exchange of letters confidential and use none but a trustworthy person as a messenger between them so as to avoid any imminent danger from the Umayyad regime: “Write to me anything you wish in secret. You should be aware of the circumstances we are in and how much we are afraid of those who are trying to inflict harm on us. Please, avoid putting us in danger. May Allāh guide you to the right path!”

The closer look into the content of these letters reveals that Ğābir ibn Zayd’s confidentiality requirements vary from one region to another. Those followers who were living close to the centre of Umayyad power and who were under scrutiny were ordered to adhere to the utmost degrees of carefulness and secrecy. In Iraq’s region and direct surroundings, the Umayyad intelligence was most active.

On the other hand, he did not show such fear in letters to other destinations, and did not explicitly ask for them to be kept hidden. He did not require secrecy in those other regions because he obviously felt safe. An example of secure places is Oman, which he mentions in his letter to Rāšid ibn Ḥayṭam, Yazīd ibn Yasār and Mālik. The context clearly reflects that they were from Oman.

However, even in his letters to his followers in Oman, Ğābir ibn Zayd was cautious in choosing his words and phrases, and he did not indicate his plans and strategies openly and clearly as he was afraid that letters could possibly fall into the hands of the Umayyad spies. This confirms what has been said about Ğābir ibn Zayd's close relations to the Azd tribe, a powerful and influential ethnic group in Oman.⁶⁸

Ğābir ibn Zayd established a well-structured circle of followers which he sent to different regions connected to his organizational centre based in Baṣra. He intended to make a permanent and strong relationship between the centre of his movement in Baṣra and its outlying regions in order to avoid any kind of dissension and disagreement.

Furthermore, Ğābir ibn Zayd began also to cleanse his organization in respect to the attitude toward contemporary movements like the *Ḥawāriğ* and the *Azāriqa*. His attitude was clearly against the *Ḥawāriğ* and he did not agree with them in terms of their violent activities. According to al-Darğīnī⁶⁹ in his book *al-Ṭabaqāt*, Ğābir ibn Zayd confronted the *Ḥawāriğ* and debated with them on how it could be lawful to kill someone who contradicts their opinion.

With regard to gender politics, Ğābir's letters indicate his interest in including women in his organization. A prominent example was a woman called Ḥayra bint Ḍamra, the recipient of the eighteenth letter. It was known that Ğābir ibn Zayd taught women in private. His pupils mention that women came to Ğābir asking *fiqh*-related questions.

In summary, Ğābir's letters give evidence to the significance he had for the early Ibādī movement: he established a knowledge transfer among the members of his organization; he taught religious and spiritual standpoints to his followers; he clarified the manner in which to deal with opponents in doctrine and creed; he advocated the use of

⁶⁸ See a list of references in Bu Larwah 2006: 63-73.

⁶⁹ Sanjuán 2012.

the principles of hidden faith (*taqīya*) as a tool to protect the movement and adhere to secrecy to keep followers safe; he called on his followers – men and women – to avoid any kind of isolation from society in order to help them coexist peacefully among other people; he demanded that his followers to become acquainted with other people’s problems; and lastly he asked them to spread their ideology.

The organizational and ideological cornerstones of the Ibādī movement were completed under the leadership of Ğābir ibn Zayd. He formed a group of people with similar views and common principles they all agreed upon. Their aim was to move in accordance towards the goals they believed in. They were connected in agreement to theological principles and organizational rules which formed their relations, style and methods of work and activity.

Ğābir’s letters also help researchers to become acquainted with personalities who, though not detailed in the historical records, nevertheless played an important role in the political and civil community during the Umayyad period.

3.3 Qur’ān and Sunna in the Letters of Ğābir ibn Zayd

In the letters of Ğābir ibn Zayd there are only a few direct quotations from the Qur’ān. Qur’ān-related terms are found nine times throughout the letters, and there is only one direct quotation from the Qur’ān in which Ğābir quotes two verses. Also interesting is the fact that Ğābir ibn Zayd does not use the name [القرآن] “the Qur’ān (al-Qur’ān)”. He rather refers to it with the synonyms “God’s scripture (kitāb Allāh)” [كتاب الله] seven times⁷⁰ and “the Truth (al- ḥaqq)” [الحق] twice⁷¹.

Each of Ğābir’s letters start with the *Tasmiya* [التسمية] or the *Basmala* [البسمة], the phrase written in full like this: [بسم الله الرحمن الرحيم] (*bismi ’llāhi ’r-raḥmāni ’r-raḥīmi*). The practice to begin a statement with the *Basmala* is adopted from the Qur’ān.

⁷⁰ See letter 4 (2 times), letter 6 (1 time), letter 10 (3 times) and letter 16 (1 time).

⁷¹ See letter 16 (2 times).

Although there are few direct quotations from the Qur'ān, reference to Quranic passages, ideas and vocabulary within the letters of Ġābir is much more widespread. Upon close reading of the letters of Ġābir, one finds many terms and expressions derived from the Qur'ān that are not explicitly cited as Quranic references. Even entire sentences can be identified, leaving the matter of interpretation and recognition of the source entirely in the hands of the reader.

The direct quotation from the Qur'ān, *istidlāl* [الاستدلال], is only found once in the letters. Ġābir imported these two verses from the Qur'ān, introducing them with a direct reference to the source:

"فاتق الله واحذر أن تنزل به منزلة من يعبد بالعمى والترك به بعد المعرفة والبصيرة فيه وذلك أنه يقول: (أكفرتم بعد إيمانكم فذوقوا العذاب بما كنتم تكفرون)⁷²، ذلك بأنهم استحبوا العمى على الهدى، واشتروا الخسران بالمربح (فما ربحت تجارتهم وما كانوا مهتدين)⁷³ وقوله: وإنك إن عصيته أدخلك (نارًا وقودها الناس والحجارة) الآية.⁷⁴"

The influence of the Qur'ān in the literary style of Ġābir is obvious. Verses can be detected, in part or in full, and there is also much Quranic diction in his writing. Ibn Zayd does not attribute his statements explicitly to the Qur'ān, even when giving answers to questions of jurisprudence. Perhaps owing to the necessity to be brief, he gives the most succinct answers he can (see Appendix 'The 18 Letters in Arabic').

Regarding the Sunna, it is a matter of record that Ġābir ibn Zayd was zealous in the pursuit of the Prophet's revelations. He travelled from Oman to Baṣra where many companions, followers and Hadith narrators lived. He timed his visits to Mecca to coincide with the *Ḥaġġ* in order to meet companions who came from other Islamic provinces.⁷⁵ Ġābir travelled from Baṣra to Mecca no fewer than forty times during the season of *al-ḥaġġ*⁷⁶. He also embarked on regular trips to Mecca and Mediina to meet Hadith narrators in order to

⁷² Qur'ān (3:106).

⁷³ Qur'ān (2:16).

⁷⁴ Qur'ān (2:24).

⁷⁵ aš -Šammāhi, 2011: 96.

⁷⁶ Ibid.

receive advice from them directly⁷⁷. Ğābir was mainly concerned with the documentation of Hadith. Ar-Rabī' ibn Sa'd said: "I saw Ğābir writing with 'Abd ar-Raḥmān ibn Tābit on 'wooden boards'."⁷⁸

A fact that needs close attention is that Ğābir ibn Zayd does not demonstrate his broad knowledge of Hadith in his letters, even though the historical record shows that he went to great lengths to collect Hadith and verify their authenticity and transmission directly from the companions. He did so as a serious scholar and religious authority and in recognition of his responsibility to preserve them for posterity and transmit them to future generations.

The following is a summary of writings that contain and cite Hadith collected by Ğābir:

- In his book *Musnad*, ar-Rabī' ibn Ḥabīb transmitted 620 Hadith originating from Ğābir.⁷⁹
- In his work *Āṭār ar-Rabī' ibn Ḥabīb*, Abū Ṣufra 'Abd al-Malik ibn Ṣufra cites ar-Rabī' ibn Ḥabīb, who in turn quotes Ḍumām ibn as-Sā'ib, who was the first to cite Ğābir ibn Zayd. This work contains approximately 324 Hadith.⁸⁰
- The *Kitāb as-Ṣalāh*, written by Ḥabīb ibn Abī Ḥabīb al-Ḥarimī, reproduces Hadith by Ğābir ibn Zayd, which were transmitted by 'Amr ibn Ḥarim.⁸¹
- The Hadith rendered by 'Amr ibn Dinār and 'Amr ibn Ḥy 'A in parts V and VI of their work *Kitāb Aqwāl Qatāda*, also quoted Ğābir ibn Zayd.⁸²

⁷⁷ Ibid.

⁷⁸ Ibn 'Abd al-Barr 2000: 102.

⁷⁹ ar-Rabī' *Musnad* 2011.

⁸⁰ Abū Ṣufra, *Āṭār al-Rabī'*, copy available in the library of the 'Abteilung für Orient- und Islamwissenschaft', Universität Tübingen.

⁸¹ Ğābir ibn Zayd, *Kitāb al-Ṣalāh*, copy available in the library of the 'Abteilung für Orient- und Islamwissenschaft', Universität Tübingen.

⁸² as-Sadūsī, *Aqwāl Qatāda*, copy available in the library of the 'Abteilung für Orient- und Islamwissenschaft', Universität Tübingen.

Additionally, Ṣāliḥ Al Busa‘idī in his work *Riwāyāt al-Ḥadīth ‘indā-l-Ibāḍiyya*, traced Ġābir’s transmissions in 23 different Hadith books (see Appendix **Table 1**, page 183).

There can only be speculation as to why not a single excerpt from the Hadith has been included in the letters. Logic dictates that letters are necessarily short, with the contents confined to the specific issues at hand. It is a given that Ġābir ibn Zayd was confident in his opinions, and as a religious scholar and jurist, his narratives drawn from his knowledge and expertise stand alone and do not require additional justification or alluding to any authorities other than the Prophet. Furthermore, the absence of any Hadith quotations in the letters reflects the limited use of Hadith in early Ibāḍī thinking. It relied rather on an imitation of good behavior and the actions of the community than on texts, even if they had been transmitted by reliable authorities.⁸³

This view is also shared by Francesca Ersilia, who states that “the concept of Sunnah comprising the exemplary behaviour of the Prophet is conspicuously absent in the works compiled by the early Ibāḍī jurisprudence as in the early Sunni sources. The old *fuqaha’* relied on the authorities whose opinion they had arrived at; they rarely had it from the Prophet, and even in that case they mostly conveyed what they conceived of as prophetic wisdom.”⁸⁴

3.4 Asceticism in the Letters

Several examples of *az-zuhd* (asceticism) can be found in these letters. *Az-zuhd* originally meant abstaining from all religiously illegal acts, avoiding shows of luxury and overindulging in worldly pleasures, focusing on acts of worship, and making preparations for the Hereafter. For some people *az-zuhd* was to shut oneself off from worldly pleasures and to dedicate oneself to worship in a mosque or a lonely place. This movement dates back to the era of the Prophet.

⁸³ Gaiser 2016: 140-144

⁸⁴ Ersilia 2002: 84.

Some of the companions were too poor to have a house of their own. They resorted to the mosque of the Prophet and took shelter there. They were called Ahl aṣ-Ṣuffa. A range of prominent companions, including Abū Hurayra and Sa‘d Ibn Abī Waqqās, were among that group.⁸⁵

The trend of *az-zuhd* has been interpreted in many different ways throughout the history of Islamic thinking. In the age of Ğābir, it was a reaction against the way of life prevailing in the Umayyad era, especially in Iraq. The elites of that era were regarded by contemporary critics, among whom Ğābir was a very prominent one, as exceedingly open to the experience of pleasures and very materialistic. They, if we can believe the sources, mainly sought the luxuries in life. *Zuhhād* (ascetics) on the contrary were tired of the turmoil of *fiṭna* and believed that for one’s salvation, one needs to turn one’s back on this world, and fully dedicate oneself to worshipping Allāh. The movement emerged in Baṣra at that time. Al-Ḥasan al-Baṣrī, one of the promoters of that movement, was a friend of Ğābir as many of the sources exhibit.⁸⁶

Historical records show that Ğābir ibn Zayd led a pious and ascetic life. On one occasion he said: “I asked my Lord for three things which He granted me: namely, a good wife, a good riding camel and my daily bread by which I am sustained”.⁸⁷

Al-Ḥaḡḡāḡ ibn Abī ‘Uyayna said: “Ğābir ibn Zayd used to visit us in our mosque. One day he came wearing an old pair of shoes and said: ‘Sixty years of my life have passed. During such period I enjoyed wealth and pleasures. This pair of shoes is better than all such wealth and pleasures’”⁸⁸. Muḥammad ibn Sīrīn (d. 110/728) said:

⁸⁵ Watt 1960: 266a-267a.

⁸⁶ Ritter 1971: 247b-248b.

⁸⁷ aṣ-Ṣammāḥī 1987: 213.

⁸⁸ Abū Nu‘aym al-Iṣfahānī 1984: 87.

“Abū š-Ša‘tā’ [i.e., Ğābir] was a pious man”⁸⁹. “Ğābir led a pious and ascetic existence,” an-Nāmī wrote.⁹⁰

The tendency to *az-zuhd* is reflected in half of the contents of Ğābir’s letters (see Appendix, **Table 2**, page 184). He focused heavily on this aspect, and he addressed spiritual matters, calling on the addressee to reduce his interest in worldly issues and concentrate on his rewards in the Hereafter.

⁸⁹Abū Nu‘aym al-Iṣfahānī 1984: 89 and 237.

⁹⁰an-Nāmī 2015: 62.

4. Analytical Study of Jurisprudence Matters in Ġābir's Letters

Jurisprudence deals with regulating the acts of *al-mukallaḑūn*, that is to say a Muslim is required to do something, or abstain from doing something, or is given the choice to do or not to do something. Muslim scholars consider jurisprudence the practical part of Islamic legislation as opposed to the Divine Texts (i.e., Qur'ān and sunna) which represent the theoretical part.

Jurisprudence gradually emerged while Prophet Muḑammad was alive, and evolved in the eras of his companions and followers. Jurisprudence prescribes a person's relations with God, himself, and others. While jurisprudence covers matters related to the Hereafter, it also deals with worldly matters, public ethics and morals.

4.1 Origins of Ibāḑī Jurisprudence

In his book *The Origin of Muhammadan Jurisprudence*, Schacht concludes that al-Ibāḑīya played no role in developing Islamic jurisprudence and that Ibāḑīs derived their jurisprudence from Sunni jurisprudence schools and applied some slight changes⁹¹.

This was refuted by Francesca Ersilia in her book *Teoria e pratica del commercio nell'Islam medievale – I contratti di vendita e di commenda nel diritto Ibadita* in which she examined the Ibāḑī jurisprudence related to commercial transactions. Her study is based on the most recently discovered Ibāḑī sources that date back to pioneering Ibāḑīs, including Ġābir ibn Zayd. Her arguments are supported by many quotations from Ġābir's letters.

Francesca Ersilia, in her study "Constructing an Identity: The Development of the Ibāḑī Law" concludes: "Schacht assumed that the Ibāḑī doctrines do not differ from those of the Sunni schools of law because the Ibāḑīs adopted the Islamic law as it was being developed

⁹¹ Schacht 1950: 67.

in the orthodox schools of law, introducing only such superficial modifications as were required by their political and dogmatic tenets. Recent studies on the Ibādī *madhhab* demonstrated that contrary to what Schacht averred, the Ibādīs took from the beginning a detached standpoint. They had their own independent authorities, collections of traditions and works by their own jurists.⁹²

Rubinacci also refuted Schacht's opinion in his study "La purità rituale secondo gli Ibaditi (Ritual purity according to the Ibadīyya)".

As several companions moved from Mecca and Medina to other places, Islamic jurisprudence spread over larger areas. People needed to know their rights and duties and wanted their social life to be in compliance with religious norms.

The field of jurisprudence was reserved to specialized scholars, but nevertheless wide-ranging in its scope, encompassing thorough knowledge of the Divine Texts, and extensive knowledge of secular regulations and social hierarchy. The few people who were knowledgeable in these areas shared their knowledge and offered advice. They came to be seen as religious authorities. Their position was codified in the term of the muftī.

4.2 Ġābir ibn Zayd, the muftī

Ġābir ibn Zayd was muftī of Baṣra.⁹³ He was recognized as a muftī by 'Abdallāh ibn 'Abbās, his own peers and pupils, and the Umayyad Caliphs and governors, including al-Ḥaḡḡāḡ ibn Yūsuf.⁹⁴ Ġābir ibn Zayd was recognized within religious circles and both by secular rulers and the laity as a religious authority as is demonstrated in the following notes:

- It is reported that 'Abdallāh ibn 'Abbās said: "I wonder why the people of Iraq seek fatwas from us, whereas Ġābir ibn

⁹² Ersilia 2014: 109-133.

⁹³ al-Warḡilānī *al-'Adl* 1985: 544.

⁹⁴ al-Warḡilānī *al-Dalīl* 1985: 43.

Zayd lives among them, his knowledge covers all of their issues.”⁹⁵

- It is reported that Iyās ibn Mu‘āwiya said: “When I was in Baṣra I found that Ğābir ibn Zayd of Umān was its leading scholar.” According to another version: “When I was in Baṣra I found that Ğābir ibn Zayd of Oman was muftī.”⁹⁶
- Abū Nu‘aym said that it was reported that ‘Abdallāh ibn ‘Abbās had said: “If the people of Baṣra adopt the opinions of Ğābir ibn Zayd, all their matters will be covered by his knowledge of the Qur’ān.”⁹⁷
- It is reported that Iyās ibn Mu‘āwiya said: “When I was in Baṣra, I found out that its only mufti was Ğābir ibn Zayd.”⁹⁸
- Al-Buḥārī reported that ‘Amr was asked: “Has Abū š-Ša‘tā’ (i.e., Ğābir ibn Zayd) told you anything about Ibādism?”. ‘Amr replied: “He has never told me anything about that. I have never met a more knowledgeable scholar than Ğābir ibn Zayd. However, if you see the man you would think that he knows nothing.”⁹⁹
- Ar-Rabī‘ ibn Ḥabīb said: “One day I sought a fatwa from Ğābir ibn Zayd. I have never spoken to a more knowledgeable and wiser scholar or leader than him.”¹⁰⁰
- One day al-Ḥaġġāġ ibn Yūsuf asked Ğābir ibn Zayd: “Oh Abū š-Ša‘tā’, what about the first verse of *Sūrat al-Baqara*?” - “That verse tells us about believers,” replied Ğābir. Al-Ḥaġġāġ asked: “What about the second verse?” - “That verse tells us about disbelievers,” replied Ğābir. Al-Ḥaġġāġ asked: “What

⁹⁵ ad-Darġinī 1974: 213;
aš-Šammāḥī 1987: 68.

⁹⁶ Abū Nu‘aym al-Iṣfahānī 1979: 86.
ad-Ḍahabī 1985, Vol. 4: 482.

⁹⁷ Abū Nu‘aym al-Iṣfahānī 1979: 86.

⁹⁸ Ibn Sa‘d 1968: 180.

al-‘Asqalānī 1908 : 38.

⁹⁹ al-Buḥārī 1960, Vol. 2: 204.

¹⁰⁰ ad-Darġinī 1974: 213.

about the third one?” - “That verse tells us about you and your party,” replied Ğābir.¹⁰¹

There are many reports in this respect. Some of them can be found in Ibrāhīm Bu Larwah’s *Mawsū‘at āṭār al-imām Ğābir ibn Zayd*.¹⁰²

4.3 Fatwas in Ğābir’s Letters

All of Ğābir’s fatwas are related to personal affairs. People wanted simply to know their rights and duties in the light of Islamic Law. They rarely asked about public issues. One third of the fatwas are related to acts of worship: *ṣalāh*, *az-zakāt*, *ṣawm*, *al-ḥaġġ*, etc. Another third covers family law (marriage, divorce, engagement, nurturing and *al-ḥul’*, etc.). A quarter of the fatwas cover transactions (commerce and financial dealings, buying, selling, contracts, tenancy, etc.). Less than a tenth of the fatwas cover good manners, criminal acts and inheritance.

What this thesis endeavors to do is to present Ğābir ibn Zayd’s judgements in jurisprudence by classifying each matter covered by his fatwas. A second aim lies in examining the different versions of the fatwas and to check their consistency.

His correspondence and the fatwas therein play a key role in the development of Islamic jurisprudence and can be used to show to what extent scholars were accurate in quoting one another. More notably, the letters can help determine whether a fatwa is authentic. This study will also analyze and explain the meaning of Ğābir’s fatwas in order to make them easier to understand. The language used in that early period of Islamic history was succinct, with the aim of being received by the fatwa seekers with as little distortion of meaning as possible.

¹⁰¹ ar-Rabī‘ 2011, 257.

¹⁰² Bu Larwah 2006 vol. 2, 152.

4.4 Fatwas and Politics

It seems that jurists were aware of the gap between jurisprudence and politics. Therefore they used to abstain from indulging in political matters even if they opposed the conduct of any political figures. Fatwas did not cover political issues. It can be very well assumed that Ğābir did have strong political standpoints, but he would – as most other theologians of the time in Iraq – refrain from expressing them.

In his letters, Ğābir ibn Zayd would say when a question was sent to him dealing with matters related to politics: “Do not send me any questions similar to this one.”¹⁰³ In his fatwas we find no direct traces of historical incidents or political issues, even though ‘Irāq was roiling with political arguments and opposing sects at the time.

Ğābir’s fatwas do not directly cover any matter related to the Islamic creed *al-‘aqīda*, though the era in which Ğābir ibn Zayd lived witnessed a turmoil with regard to creed. Even under this aspect no traces of ān Qur interpretation can be found in the fatwas. Finally it can be stated that nothing in the fatwas covers matters related to *ġihād*.

In his letter (15) to Malik, Ğābir advised him to “give up what is doubtful to you for that which is not doubtful.” Also in the letter (16) to ‘Abd al-Malik ibn al-Muhallab, Ğābir wrote, “do not run into a risk lest you should cause us to perish.” Such clear statements from Ğābir often appeared through his letters, which inspired his followers not to ask him about issues that he didn’t want to be asked about.

As an-Nāmī noted, Ğābir, while living in Baṣra, one of the major centres of political activities, and being contemporary with the events of that formative period (28-93 AH), he was able to develop and formulate a clear understanding of the religious affairs of the growing Muslim community. Therefore, Ğābir avoided subjects that might have caused disputes within that community, such as the issues of *al-‘aqīda*.

¹⁰³ See letter 6 to ‘Unayfa, Fatwa (47).

5. The Fatwas

The focus of the next pages is to shed light on the fatwas in the letters. In order to make it easier it was necessary to (1) make an index for the fatwas; (2) give them numbers; (3) classify matters in terms of their subject; and (4) study them and analyze their content.

It is worth mentioning that some matters may fall in more than one branch of jurisprudence, and a single matter may be divided into several matters. Therefore, the fatwas' classification in categories was done according to their highest relevance.

5.1 The Study's Approach in Analyzing Ĝābir's Fatwas

In Ĝābir's letters, 120 jurisprudential matters are discussed. For clarity, a modern classification of the fatwas can place them into six groups in accordance to their content: acts of worship (39), family law (39), transactions (31), criminal law (4), inheritance matters (2) and diverse matters (7). The 120 fatwas discerned from Ĝābir's letters are listed individually in the appendix. (Their distribution among jurisprudence categories is illustrated in **Table 3**, page 185.)

A percentage of 32% of the fatwas is related to acts of worship covering prayers, *az-zakāt*, *al-ḥağğ*, etc. An equal number (32%) covers Islamic family law (marriage, divorce, nurturing, *al-ḥul'* etc.). A percentage of 26% of the fatwas deals with transactions of commercial or financial nature. A percentage of less than 10% of the fatwas covers criminal law, inheritance and diverse matters.

Surprisingly, Ĝābir's fatwas do not directly cover any matter related to the Islamic creed '*aqīda*, though the era in which Ĝābir ibn Zayd lived witnessed a profound debate on issues of creed. In the fatwas, no direct traces of historical incidents or political issues can be found, though Iraq at the time was entangled in controversial political arguments and opposing sects. Also, no traces of Qur'ān interpretation can be found in the fatwas. Finally, nothing in the fatwas covers matters related to ğihād.

All of the fatwas are related to personal affairs of people who seek guidance. During the first *hiğrī* century people asked mostly about the following matters (in the given order):

- Acts of worship (prayers, *az-zakāt*, fasting, *al-ħağğ* etc.) regulating a Muslim's relationship with God.
- Personal status matters (marriage, divorce, engagement, nurturing, inheritance etc.) directing life under Islamic law.
- Financial transactions (sale, purchase, tenancy etc.) in order to give advice in business relations among Muslims and with Non-Muslims.
- Diverse other matters governing one's conduct and providing directions in terms of ethical behaviour.

5.2 Jurisprudence Relating to Acts of Worship

In Ğābir ibn Zayd's letters we can find 39 fatwas dealing with acts of worship fiqh *al-ḥādāt* فقه العبادات (see Appendix **Table 4** page 185), among them dealing with purification *āt-ṭahāra* الطهارة (18), prayers *aş-şalāh* الصلاة (10), *az-zakāt* الزكاة (7), *al-ħağğ* الحج and *al-umra* العمرة (3), and fasting الصوم *aş-şawm* (1).

Matters related to purification are outlined in **Table 5** (see Appendix, page 186) and can be divided into five categories:

- Performing *al-ğusl* الغسل after having sexual intercourse (8 matters)
- *at-tayammum* التيمم (dry ablution) (4 matters)
- Touching genitals (1 matter)
- Provisions regarding fluid discharges from genitals (2 matters)
- Clothes stained with an impure substance (3 matters).

Matters related to Purification

Performing *al-ḡusl* الغسل.

According to Ḡābir in **Fatwa 21**, a man does not need to perform *al-ḡusl* after each sexual intercourse. He may have sexual relations with more than one woman and perform *al-ḡusl* when he finishes the last sexual intercourse. This opinion is based on a Hadith recorded by Anas ibn Mālik in which Prophet Muḥammad used to have sexual relations with his wives one after the other and perform *al-ḡusl* when he finished the last sexual intercourse.¹⁰⁴ Several Ibādī scholars adopt this opinion. However, some Ibādī scholars do not.¹⁰⁵

The same applies to a person who is required to perform *al-ḡusl* for more than one reason. Examples include: (1) A man who is required to perform *al-ḡusl* because of *al-ḡanāba* (impurity) and perform pre-Friday prayer *al-ḡusl*; (2) A woman who is required to perform *al-ḡusl* because of *al-ḡanāba* and perform after-menstruation *al-ḡusl*¹⁰⁶.

In **Fatwa 22** Ḡābir believes that a woman's *al-ḡusl* cannot be called a proper *al-ḡusl* unless it is completed. Therefore, her husband had to wait until she finishes her *al-ḡusl*. Ḡābir believes that a woman who has not finished her post-menstrual *al-ḡusl* is still considered to be menstruating. The Qur'ān provides a decisive provision in this respect:

وَيَسْأَلُونَكَ عَنِ الْمَحِيضِ قُلْ هُوَ أَذَىٰ فَأَعْتَرُوا النِّسَاءَ فِي الْمَحِيضِ وَلَا تَقْرُبُوهُنَّ حَتَّىٰ يَطْهُرْنَ
فَإِذَا تَطَهَّرْنَ فَأْتُوهُنَّ مِنْ حَيْثُ أَمَرَكُمُ اللَّهُ إِنَّ اللَّهَ يُحِبُّ التَّوَّابِينَ وَيُحِبُّ الْمُتَطَهِّرِينَ¹⁰⁷.

¹⁰⁴ al-Haḡḡaḡ 1997, Vol. 1: 249.

an-Nasā'ī 2001, Vol. 8: 208.

¹⁰⁵ Aṭfayyīš 1985, Vol. 1: 329.

¹⁰⁶ as-Sālimī 2010: 447.

¹⁰⁷ Qur'ān (2:222).

Ğābir’s opinion regarding this issue is the same as that of the vast majority of all Islamic jurisprudence schools. On the other hand, *Zāhirīs* are of a different opinion: They believe that purification in the above-mentioned verse means washing the woman’s genitals rather than an entire bath. Therefore they believe that a man is allowed to have sexual relations with his wife when her period stops and she washes her genitals, even before she performs post-menstrual *al-ğusl*.¹⁰⁸

As-Sālimī reported that it is unanimously agreed upon that a man is not allowed to have sexual intercourse with his wife during her period. A breacher of this provision shall be fined a dinar. If a man sleeps with his wife after her period stops, but before she has completed her post-menstrual *al-ğusl*, he shall give to charity or fast.¹⁰⁹ As-Sālimī also discussed that matter from a different angle. In his book *Ma’āriğ al-amāl ‘alā madāriğ al-kamāl* he discussed in detail a case where a man sleeps with his wife before her period completely stops. According to some Ibādī scholars, the couple shall be separated. That opinion prevailed in ‘Umān before as-Sālimī’s era.¹¹⁰

Fatwa 24 deals with whether a person is not required to perform *al-ğusl* immediately after having sexual intercourse. Therefore it is recommendable for him to wash his penis and then perform ablution if he plans to have another sexual intercourse. Otherwise, he should perform *al-ğusl*. The same provision can be found in a *aḥādīṭ* of ar-Rabī‘ ibn Ḥabīb’s *Musnad*: It is recorded that ‘Umar ibn al-Ḥaṭṭāb said: “O Messenger of Allāh! What should I do after I become *al-ğunub* at night?” - The Prophet said: “Perform ablution and wash your penis. Then go to bed.”

¹⁰⁸ az-Zuhaylī 2009: 629.

¹⁰⁹ as-Sālimī 2010: 254.

¹¹⁰ al-Bisyāwī 1985: Vol. 1, 36.

According to Abū ‘Ubayda, “ablution” here means washing one’s hands.¹¹¹ In his book *Qawā’id al-Islām*, Ismā‘īl al-Ġayṭālī, an Ibādī scholar, reported that Ġābir ibn Zayd said: “In case of *al-ḡanāba*, one should do nothing before performing ablution.”¹¹²

This fatwa is in agreement with a Hadith: “After having sex with your wife, if you would like to have another intercourse with her, perform ablution.”¹¹³ Scholars believe that performing ablution in this case is recommendable, not mandatory.

In **Fatwa 25**, Ġābir ibn Zayd explains how to perform *al-ḡusl al-ḡanāba*: First, he washes his penis. Then, he washes his hands without submerging them in the water container (for instance by using a cup or a bucket). After that, he pours water on his entire body.

These are the minimum requirements for *al-ḡusl* in order to regain ritual purity, termed as “effective *al-Ġusl*” by scholars. A more elaborate form is mentioned in several Hadith including the following one recorded by Ġābir ibn Zayd (in ar-Rabī‘ ibn Ḥabīb’ s *Musnad*): “‘Ā’iša said: ‘The Messenger of Allāh performed *al-ḡusl al-ḡanāba* as follows: First of all he washed his hands, performed ablution, took some water and washed the roots of his hair. Then he thrice poured water on his head. Finally, he poured water on his entire body. All that is preceded by cleansing his penis.’”¹¹⁴ Ġābir said: “Then he washes his hands without submerging them in the water container.” This procedure is derived from the Prophet’s example.

In **Fatwa 26** Ġābir deals with the ablution performed during *al-ḡusl* which makes a person ready for prayers. According to Ġābir that person need not perform a new ablution after *al-ḡusl*. This behaviour is derived from the Prophet’s tradition. ‘Ā’iša said: “The Messenger

¹¹¹ ar-Rabī‘ 2011: 40.

¹¹² al-Ġayṭālī 2015: 205.

¹¹³ al-Ḥaḡḡāḡ 1997, Vol. 1: 259.

¹¹⁴ ar-Rabī‘ 2011, Vol. 1: 39.

of Allāh used not to perform ablution after performing *al-ḡusl*.”¹¹⁵ In his *Muṣannaḡ*, Ibn Abī Šayba al-‘Absī reported that ‘Abdallāh ibn ‘Umar was asked about performing ablution after *al-ḡusl*, and replied: “What ablution could be more comprehensive than *al-ḡusl*?”¹¹⁶

Ibn Abī Šayba also reported that Ğābir ibn Zayd was asked: If a man finishes *al-ḡusl* in which he performed ablution, does he need to perform ablution again? Ğābir ibn Zayd replied: “He only needs to wash his feet.”¹¹⁷

As-Sālimī’s opinion in this respect is the same as Ğābir ibn Zayd’s.¹¹⁸ However, Muḡammad ibn Baraka (d. 363/973) is of a different opinion. He believes that after *al-ḡusl* one needs to perform ablution. He argues that both *al-ḡusl*, and ablution are two separate mandatory actions, so doing one of them does not relieve the person from the obligation of doing the other.¹¹⁹

Fatwa 27 covers several issues. First issue: The quantity of water needed for *al-ḡusl*. Ğābir said that the person posing the question needs a relatively big or medium container of water. There are two accounts attributed to Ğābir ibn Zayd in this respect:

The first version can be found in ar-Rabī‘ ibn Ḥabīb’s *Musnad*. Abū ‘Ubayda reported that Ğābir ibn Zayd told him that ‘Ā’iša said: “The Prophet used a *farq* for performing *al-ḡusl al-ḡanāba*.” ar-Rabī‘ commented: “*Farq* is a container used in al-Ḥiḡāz. Its capacity is sixteen pounds.”¹²⁰

The second version can be found in Ibn Abī Šayba al-‘Absī’s *Muṣannaḡ*. It is recorded that Ğābir ibn Zayd was asked about the amount of water needed for performing *al-ḡusl al-ḡanāba*. Ğābir

¹¹⁵ at-Tirmidī 2002: 46.

¹¹⁶ al-‘Absī 1989: 88.

¹¹⁷ al-‘Absī 1989: 89.

¹¹⁸ as-Sālimī 2010: 480.

¹¹⁹ Ibn Baraka 2007: 435.

¹²⁰ ar-Rabī‘ 2011, Vol. 1: 40.

replied: “One *sā’*.” The person posing the question said: “I do not think that amount is enough for me.”. Ğābir replied: “It is enough!”¹²¹

Second issue: The person performing *al-ğusl* needs to rub his head with water and comb water through his beard. Some Ibādī scholars deem that obligatory while others deem it optional.¹²²

Third issue: After sexual intercourse, if the clothes of the husband and wife and their bed sheet were not stained with *nağāsa*, they do not need to wash them.¹²³

In **Fatwa 28** Ğābir explains what a person should do after having sexual relations. He advises us not to let our bodies or garments be stained with *nağāsa*. After having sexual relations, if a man touches his wet penis he must avoid touching his clothes until he has washed his hands. It is recommended that he wash his penis after the sexual intercourse and before his clothes or bed sheet have become stained with *nağāsa*.

It seems that Ğābir believes that semen is not pure. Scholars have different opinions in this respect. Some scholars, including Ğābir ibn Zayd, deem semen impure just as blood. This is based on his report in ar-Rabī‘ ibn Ḥabīb’s *Musnad*. Abū ‘Ubayda stated that Ğābir ibn Zayd reported that ‘Abdallāh ibn ‘Abbās recorded that the Prophet said: “A garment stained with semen, pre-seminal fluid, post-urinating fluid, menstrual blood, or puerperium blood may not be worn while praying until it has been washed and no traces of the stain can be found.”¹²⁴

On the other hand, some scholars, including aš-Šāfi‘ī, deem semen not impure. They believe it is a disgusting substance which should not be left on one’s body or clothes, just like nasal mucus. In his *Kitāb al-Umm*¹²⁵, aš-Šāfi‘ī discussed that matter in detail. It was

¹²¹ Ibn Abī Šayba 1989: 85.

¹²² Aṭfayyīš 1986: 148.

¹²³ as-Sālimī 2010: 369.

¹²⁴ ar-Rabī‘ 2011, Vol. 1: 41.

¹²⁵ aš-Šāfi‘ī 1993: 124.

also discussed in detail by Abū Muslim al-Bahlānī, an Ibādī scholar, in his book *Niṭār al-Ġawhār*.¹²⁶

Tayyammum

According to Ġābir, in **Fatwa 35**, one may resort to dry ablution only when there is no water available. If a person can get water, although at considerable difficulty, he must perform wet ablution. He must do that even if that makes him miss the congregational Friday prayer. He can still pray *az-ẓuhr* as he still has time to do so. This opinion is derived from the Qur'ān:

وَإِنْ كُنْتُمْ مَرْضَىٰ أَوْ عَلَىٰ سَفَرٍ أَوْ جَاءَ أَحَدٌ مِنْكُم مِّنَ الْغَائِطِ أَوْ لَامَسْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا فَامْسَحُوا بِوُجُوْهِكُمْ وَأَيْدِيكُمْ إِنَّ اللَّهَ كَانَ عَفُوًّا غَفُورًا.¹²⁷
فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا فَامْسَحُوا بِوُجُوْهِكُمْ وَأَيْدِيكُمْ مِنْهُ¹²⁸

Fatwa 38 gives us more details about the preceding subject regarding *al-tayammum* (dry ablution). It deals with priorities. Preserving one's soul is given precedence over performing wet ablution when water is scarce and the person may suffer from thirst. However, if he does not fear to suffering from thirst if he uses the water he has for *al-ḡusl*, but the water he has is not enough, he may just wash his penis, perform wet ablution, and pray, according to Ġābir.

This opinion is supported by an account found from Abū Ġānim al-Ḥurāsānī. Abū l-Mu'riġ reported that he asked Ibn 'Abd al-'Azīz: "A traveller became *al-ḡunub* and did not have access to water, so he resorted to *tayammum* and prayed. Then he found water but it was not enough for performing *al-ḡusl*. What should he do?" Ibn 'Abd al-'Azīz replied: "He should purify his penis, perform wet ablution, then dry ablution, and pray." In another context Ibn 'Abd al-'Azīz replied: "This is derived from an account attributed to Abū 'Ubayda, in which

¹²⁶ Abū Muslim 2009: 204.

¹²⁷ Qur'ān (4:43).

¹²⁸ Qur'ān (5:6).

he reported what Ğābir ibn Zayd had received from ‘Abdallāh ibn ‘Abbās. Since that man did not have enough water to perform a complete *al-ğusl*, he should wash his penis, then perform wet ablution and dry ablution.”¹²⁹

Muḥammad al-Kindī in his book *Bayān al-Šar‘* attributed the following fatwa to Ğābir ibn Zayd. One day Ğābir was asked about a man who has little water and who he does not fear of suffering from thirst, and he gets *al-ğunub* – what should he do? Ğābir answered: “In this case, he needs to wash his penis, and perform ablution” [according to some narrators, Ğābir added, “and pray.”].¹³⁰

In his *Īdāh*, aš-Šammāḥī reported that Ğābir ibn Zayd delivered a fatwa about a *al-ğunub* man who has a quantity of water that is enough to make him able to perform ablution rather than *al-ğusl*. His answer was as follows: “He should perform ablution, and that will be enough.”¹³¹

According to Ğābir, if the man in question finds water he must perform *al-ğusl*. Ibāḍī scholars of the post-Ğābir era have different opinions about this issue.

In **Fatwa 39**, Ğābir ibn Zayd talks of a man, who had performed *tayammum* and prayed. Later, he found a group of people praying and joined them. Ğābir stated that what matters in this respect is the fear of missing the prayer, so that the man in question would resort to dry ablution only if he fears missing the prayer. This underlines his opinion expressed in Fatwa 35.

Some Ibāḍī scholars adopt the same opinion. On the other hand, some other Ibāḍī scholars believe that not having water is enough to resort to dry ablution.¹³²

¹²⁹ B‘ayū 2006: 173.

¹³⁰ al-Kindī 1985a: 62.

¹³¹ aš-Šammāḥī 1970: 301.

¹³² as-Sālimī 2010: 622.

In **Fatwa 40**, Ğābir affirms his opinion stated in Fatwa 38 in which he recommended *al-ğusl* for the man who performed dry ablution (as an alternative of *al-ğusl*) and prayed, should he later find water later during the term of the prayer.

In **Fatwa 41**, Ğābir resolves the question as to whether used water can be re-used or not. He believes that water may only be used once for *al-ğusl*. Therefore, if a man submerges his head in a water container so as to wash his head, he may not use the same water for washing the rest of his body.

The following fatwa was reported from Ğābir ibn Zayd by Ismā‘īl al-Ğayṭālī in his book *Qawā‘id al-Islām*. In it it was mentioned that Ğābir ibn Zayd believed that it is repugnant for a man to wash his head in a water container, and then pour the same water on his body so as to perform *al-ğusl*. It seems that Ğābir ibn Zayd is of the opinion that such *al-ğusl* is invalid.¹³³

This fatwa also deals with another issue - the discrimination between still and running water. Ğābir believes that it is permissible to re-use running water.

Touching Genitals

Fatwa 42 deals with a man who touched his private parts or armpits whilst performing prayers. Ğābir believes that this is repugnant. However, he says he may do that when a piece of his clothing is between his hand and the body part. Otherwise, his prayer shall be deemed terminated. He then needs to repeat his ablution and the prayer.

This is a controversial matter in Ibāḍī jurisprudence. In ar-Rabī‘ ibn Ḥabīb’s *Musnad*, which, according to Ibāḍīs, is the most accurate aḥādīṭ source, we find Hadith No. 112, which reads as follows: ‘Abdallāh ibn ‘Abbās reported that the Prophet said: “Touching one’s

¹³³ al-Ğayṭālī 2015: 171.

caudal end does not invalidate ablution. Nor does touching one's pubic region." It seems that this Hadith opposes Ğābir ibn Zayd's fatwa.

Jurists debated a great deal on this issue. One of the best discussions of this issue can be found in the book entitled *Ar-Rabī' ibn Ḥabīb: Makānatuhū wa-Musnaduhū* written by Sa'īd ibn Mabruk al-Qannūbī, a contemporary Ibādī scholar.¹³⁴

Provisions Relating to Bodily Fluids

Fatwa 84 deals with a case in which a pre-seminal fluid is discharged from a man's genitals. Should he perform *al-ḡusl*? Ğābir believes that that man does not need to perform *al-ḡusl*. What he needs to do is to remove that liquid with water. If that man wants to pray, he needs to perform ablution. Ğābir's fatwa is based on a Hadith which can be found in ar-Rabī' ibn Ḥabīb's *Musnad*. 'Abdallāh ibn 'Abbās related that the Prophet said: "Discharge of *maḍī* entails performance of ablution, and discharge of semen entails performance of *al-ḡusl*."¹³⁵

Ğābir also transmitted another aḥādīṭ in this respect from 'Alī ibn Abī Ṭālib. This can be also found in ar-Rabī' ibn Ḥabīb's *Musnad*: "Ğābir ibn Zayd said: 'Alī ibn Abī Ṭālib ordered al-Miqdād ibn al-Aswad to seek a fatwa from the Prophet about a husband who approached his wife and discharged *maḍī* – what should he do? Alī declared himself too shy to ask the Prophet about that, as he was his son-in-law. Therefore it was al-Miqdād who asked the Prophet about the issue. The answer was: 'If one of you finds himself in this situation, he needs to splash his penis with water and then perform ablution.'¹³⁶

It seems that Ğābir deems *maḍī* impure as he himself stated the following Hadith, which can be found in ar-Rabī' ibn Ḥabīb's

¹³⁴ al-Qannūbī 1995: 209.

¹³⁵ ar-Rabī' 2011: 32; 37.

¹³⁶ Ibid.: 32.

Musnad: “Abū ‘Ubayda wrote that Ğābir ibn Zayd reported that ‘Abdallāh ibn ‘Abbās recorded that the Prophet said: ‘A garment stained with semen, pre-seminal fluid, post-urinating fluid, menstrual blood, or puerperium blood may not be worn while praying unless it is washed and no traces of the stain can be found.’”¹³⁷

To summarize, it can be said that although *maḍī* is considered impure, a discharge of that liquid does not necessarily entail the performance of a complete *al-ḡusl*. This interpretation also helps to make all of the statements regarding the subject consistent. In his *Ma‘āriḡ al-Āmāl ‘alā madāriḡ al-kamāl*, as-Sālimī discussed in detail the provisions regarding liquids discharged from the human body.¹³⁸

Fatwa 114 deals with liquids that are discharged from women’s genitals and whether their discharge entails mandatory performance of *al-ḡusl* or not. Ğābir believes that it does not, but such liquids must be washed off, because Ğābir deems such liquids impure. He applies the same rule as in the case of a man’s discharge of *maḍī* discussed previously.

The liquid that was discharged from the woman’s genitals could be the man’s semen that was trapped in her womb after their sexual intercourse. Ğābir’s fatwa can also be found in Ibn Abī Šayba al-‘Absī’s *Muṣannaf*: “Qatāda reported that Ğābir ibn Zayd was asked about a case in which a woman, after performing *al-ḡusl al-ḡanāba*, a liquid (her husband’s semen trapped in her womb) was discharged from her genitals. What should she do? Ğābir said: ‘She needs to perform ablution.’”¹³⁹

Clothes Stained with Impure Substances

Fatwa 115 deals with keeping away from *naḡāsa* and avoiding touching one’s clothing before washing hands that are stained with

¹³⁷ Ibid.: 47.

¹³⁸ as-Sālimī 2010: 205.

¹³⁹ al-‘Absī 2004, Vol. 1: 254.

nağāsa. That opinion became in particular a trend in the Ibādī school in particular. Ibādī scholars are very strict in terms of *nağāsa* and purification.

Fatwa 116 deals with matters in which Ğābir ibn Zayd’s opinion contradicts with the opinion of some of the companions. The companions’ opinions varied regarding the case in which a man sleeps with his wife, but does not discharge semen. Some companions believe that the activity still entails mandatory performance of *al-ğusl*. However, some other companions believe that it does not. The latter party’s opinion is based on an aḥādīṭ of the Prophet regarding having sexual relations and *al-ğusl*: “Only discharge of semen entails performance of *al-ğusl*.”¹⁴⁰

The latter party includes Ubay ibn Ka‘b, the narrator of the following Hadith. Ğābir’s discussion of that matter can be found in ar-Rabī‘ ibn Ḥabīb’s *Musnad*. Ğābir ibn Zayd said: “It was reported that Ubay ibn Ka‘b said that the Prophet stated with regard to sexual relations and *al-ğusl*: ‘Only discharge of semen entails performance of *al-ğusl*.’” Then Ğābir ibn Zayd commented: “This means that even if male and female organs come in close contact, the man only needs to perform *al-ğusl* afterwards only if he discharges semen.”

In contradiction to this, ‘Ā’iṣa and Umm Salama (two of the Prophet’s wives) are quoted to have said: “The Messenger of Allāh used to do so, and (in this situation) he used to order his wives to perform *al-ğusl*. He used to say: ‘If male and female organs come in close contact, then *al-ğusl* is obligatory, whether the man discharged semen or not.’”¹⁴¹

Fatwa 117 deals with washing clothes stained with *nağāsa*. Ğābir believes that such clothes need to be washed rather than sprinkled with water. His judgement is based on a Hadith in ar-Rabī‘

¹⁴⁰ Muslim 1997, Vol. 1: 279.

¹⁴¹ ar-Rabī‘ 2011, Vol. 1: 38.

ibn Ḥabīb's *Musnad*. Ḡābir ibn Zayd transmitted that Asmā' bint Abū Bakr said: "One day a woman asked the Messenger of Allāh: 'What should a woman do when her clothes become stained with menstrual blood?' - The Messenger of Allāh replied: 'In this situation, she needs to rub that blood off and sprinkle the stained area with water. After doing so, she can pray [wearing those clothes].'"¹⁴²

Matters Related to Prayers

In Ḡābir ibn Zayd's letters we find ten matters related to prayers. **Table 6** (see Appendix page 187) lists the corresponding fatwas according to their topics.

- Provisions governing Friday Prayer and reward thereof (2 matters).
- Provisions governing prayers (2 matters).
- Making up for missed units in prayers (1 matter).
- Reciting Qur'ān in prayers (1 matter).
- Missing *ar-rukū'* in prayers (1 matter).
- Prayers during travel (1 matter).
- Voluntary Night Prayers (1 matter).
- Praying without being circumcised (1 matter).

The following paragraphs will discuss the above-mentioned prayers matters in detail. In **Fatwa 9**, Ḡābir deals with the relationship between circumcision and prayers, a matter that is heavily discussed in Ibādī literature. Ḡābir ibn Zayd's pronouncements about circumcision are numerous. The following are but a few examples:

In ar-Rabī' ibn Ḥabīb's *Musnad*, Ḡābir ibn Zayd said: "*Witr* Prayer [a voluntary night prayer with odd-numbered units], stoning [of adulterous people], circumcision, and *istinḡā* [cleaning genitals after urinating or easing one's nature] are obligatory actions."¹⁴³

¹⁴² Ibid., Vol. 2: 41.

¹⁴³ Ibid., Vol. 1: 51.

In al-Bayhaqī's *Sunan al-kubrā* Ğābir ibn Zayd reported that 'Abdallāh ibn 'Abbās said: "Circumcision is voluntary for males, and a sign of honour and dignity for females."¹⁴⁴

The relationship between circumcision and prayers is discussed in many books, including Muḥammad al-Kindī's *Bayān al-Šar'*. It quotes Ğābir ibn Zayd, who stated that 'Abdallāh ibn 'Abbās said: "As for uncircumcised people: If they slay an animal you may not eat it. They are not eligible to give testimony; and their *al-ḥağğ* and prayer are not accepted by God."¹⁴⁵

In Ibādī jurisprudence, there are a great deal of strict provisions regarding uncircumcised people: According to Aṭfayyīš's *Šarḥ al-Nīl wa-šifā' al-'alīl*, uncircumcised people's testimony is not acceptable, no marriage relations may be established with them, animals slain by them may not be eaten, and they may not be made prayer leaders: "No marriage relations may be established with uncircumcised people; their *al-ḥağğ* is deemed incomplete, *qisās* does not apply to them, they may not enter mosques. No one may take their garments and wear them while praying, no one may take their mats and use them as praying mats (...)." ¹⁴⁶

As-Sālimī was asked: "Shall we treat uncircumcised people as if they were *mušrikūn* [polytheistic people]?" As-Sālimī replied: "Yes, because with avoiding circumcision they are similar to *mušrikūn*. Circumcision is one of the requirements of Islam. No circumcision means no Islam!"¹⁴⁷

Fatwa 29 deals with the reward for the performance of voluntary night prayers. Ğābir made some pronouncements regarding the subject. For instance, he reported that 'Ā'īša narrated that the Prophet said: "Any person who performs voluntary prayer at night

¹⁴⁴ al-Bayhaqī 2004, Vol. 8: 563.

¹⁴⁵ al-Kindī 1985b, Vols. 47-48: 445.

¹⁴⁶ Aṭfayyīš 1985, Vol. 6: 37.

¹⁴⁷ as-Sālimī 2010, Vol. 1: 339.

regularly, but on a certain night is overcome by sleep, will be given the reward for praying. His sleep will be regarded as almsgiving.”¹⁴⁸

There may be a problem here with regard to the exact wording of the aḥādīṭ. Ġābir ibn Zayd’s quotation is similar to one of the Messenger’s Hadith. However, I found that the words are not identical. This remark is intended to place blame on Ġābir ibn Zayd, as he properly paraphrased the meaning. The Hadith in question is mentioned in many Hadith sources as follows. In his *Ṣaḥīḥ Muslim* received from Abū Hurayra, the Prophet said: “Our Lord, the Blessed and Exalted, descends every night to the heaven of this world when the last third of the night is still to come and says: ‘Who will call on Me, so that I may answer him? Who will ask Me, so that I may give him? Who will ask forgiveness of Me, so that I may forgive him?’”¹⁴⁹

In his *Musnad*, Aḥmad ibn Ḥanbal recalled it as follows: “At a certain time at night the gates of heaven open and a caller says: ‘Who will call on Me, so that I may answer him? Who will ask Me, so that I may give him? Who will ask forgiveness of Me, so that I may forgive him?’”¹⁵⁰

Fatwa 30 deals with a matter about which the Ibāḍī School adopts an opinion that differs from the opinion adopted by all other Islamic Schools, with the exception of a few scholars. How can a person, who misses one or more units of prayer, make up for what he missed? In other words, after the prayer leader finishes his Maghrib prayer (which consists of three units), for example, shall the person who missed the first two units deem his next units No. 1 and 2 or No. 2 and 3? Scholars’ opinions differ on this issue. We have Ibāḍī reports in this respect:

In Ar-Rabī‘ ibn Ḥabīb’s *Musnad* is written that Ġābir ibn Zayd reported that Anas ibn Mālik noted that the Messenger of Allāh said:

¹⁴⁸ ar-Rabī‘ 2011, Vol. 1: 76.

¹⁴⁹ Muslim 1997, Vol. 1: Hadith 521.

¹⁵⁰ Ibn Ḥanbal 2001, Hadith: 9922.

“When the words of *iqāma* are pronounced, none of you should run to it (to join the prayer) but walk with tranquility and dignity and pray what you are in time for and complete what has gone before (what the Imām has completed).”¹⁵¹

Abū Ġānim al-Ḥurāsānī’s *Mudawwana* states that both Abū l-Mu’arrīğ and ar-Rabī’ ibn Ḥabīb reported that Abū ‘Ubayda said: “The first unit you make up for shall be deemed your very first one.” The same opinion is attributed to Abū al-Mu’arrīğ, Ḥāğib, ar-Rabī’, and Ġābir ibn Zayd.¹⁵² That matter was fully discussed by Sa’īd ibn Mabrūk al-Qannūbī in his research entitled *al Istidrāk fī l-ṣalāṭ*¹⁵³.

In **Fatwa 31** Ġābir deals with two issues. First of all he states that the Friday prayer consists of two units. This is unanimously agreed upon as a fact.¹⁵⁴ Then he discusses what a man should do if he misses Friday prayer altogether. Shall he perform a two-unit prayer (like Friday prayer) or a four-unit prayer (like noon prayer) instead? Ġābir believes that this man needs to perform a four-unit prayer (like the noon prayer), as he does not meet the requirements of Friday prayer which must be prayed with a prayer leader. Since he missed Friday prayer, he needs to perform an original four-unit prayer.

This opinion was adopted by some companions under whom Ġābir studied, including Abū Hurayra and ‘Abdallāh ibn Mas‘ūd. Mālik ibn Anas reported: “Abū Hurayra has said that the Messenger of Allāh said: ‘Whoever attends only one unit of the Friday Prayer needs to pray another unit. Whoever misses both units of the Friday Prayer needs to pray four units.’” The same report can also be found in *Mu’ağam al-Ṭabarānī* by ‘Abdallāh ibn Mas‘ūd.¹⁵⁵

¹⁵¹ ar-Rabī’ 2011, Vol. 1: 58.

¹⁵² al-Ḥurāsānī 2006, Vol. 1: 123.

¹⁵³ al-Qannūbī 1991: 5.

¹⁵⁴ as-Sālimī 2010, Vol. 5: 372.

¹⁵⁵ aṭ-Ṭabarānī 1982, Vol. 4: 143.

al-Haytamī’s 1994, Vol. 2: 192.

In **Fatwa 32**, Ğābir emphasized the importance of the Friday congregational prayer, stating that it is an important religious duty in Islam. It is reported that Ğābir said “that Allāh sends angels to mosques, and orders them to stand at the gates of mosques so as to take down the names of every Muslim who comes to perform the Friday prayer. Those angels keep doing that until the Imām climbs up his minbar (pulpit).” It is also reported, Ğābir concludes, that “on Friday there is a certain period in which invocations are acceptable. Moreover, from ‘Abdallāh ibn ‘Abbās it is also reported that that certain period is when the Imām climbs down his minbar in order to proceed with the prayer. That time is the busiest time for the angels in terms of their lines in prayer.”

This fatwa deals with the Friday prayer and the reward for its performance. According to Ibādī sources, Ğābir strictly observed the Friday prayer. He has never missed it, even if the mosque was very far away. According to Ibādī beliefs, Ğābir’s strict observance of the Friday Prayer had not only a religious, but also a political background. In terms of religion, it is obligatory. Ğābir’s statements on the subject can be found in many books, including Ar-Rabī‘ ibn Ḥabīb’s *Musnad*. In it, Ğābir ibn Zayd is quoted in reporting that Abū Hurayra said: “I went out to aṭ-Ṭūr and met Ka‘b al-Aḥbār. He and I spent some time together, during which I transmitted things to him from the Messenger of Allāh and he handed down things to me from the Tawrah (Torah). I said to him: The Messenger of Allāh said: ‘The best day on which the sun rises is Friday. On this day, Adam was created, on this day he was sent down, on it repentance was accepted, on this day he died, and on this day the Hour will begin. There is no living creature on earth that does not listen out from Friday morning until the sun rises, fearing the onset of the Hour, except human beings and jinns. On (Friday) there is an hour in which, if a believer prays and asks Allāh for something, He will give it to him.’ Ka‘b said: ‘Is that one day in every year?’ I said: ‘No, it is every Friday.’ Then Ka‘b read in the Tawrah (Torah) and said: ‘The Messenger of Allāh spoke the truth.’” Ğābir commented:

“It is the last part of the day on Friday. The same was reported to me from ‘Abdallāh ibn Salām.”¹⁵⁶

Ĝābir used to observe Friday prayer, even if al-Ḥaġġāġ ibn Yūsuf was the prayer leader. In his *Musnad*, ar-Rabī‘ ibn Ḥabīb reported that Ḍimām ibn al-Sā‘ib said: “On Friday I went to Abū aš-Ša‘tā. When it was almost Friday prayer time he said to me: ‘Let’s go to pray the Friday Prayer.’ – ‘Will you pray Friday prayer even if the prayer leader is al-Ḥaġġāġ ibn Yūsuf?’, I wondered. He replied: ‘Yes, I will. It is a congregational prayer and an established sunna.’”¹⁵⁷

According to an anecdote, al-Ḥaġġāġ ibn Yūsuf used to give extraordinary long sermons on Friday, exceeding the time of Friday prayer. Fearing of al-Ḥaġġāġ’s tyranny, Ĝābir, in order not to miss the prayer used to pray the Friday prayer secretly, using his head movements during the lengthy sermon. Ĝābir commented on that: “Now knowledge comes to the rescue!” Noticing Ĝābir’s head movements, al-Ḥaġġāġ commented: “Now we know who prays with us and who doesn’t!”¹⁵⁸ That anecdote was reported by a range of historians, including aš-Šammāḥi and al-Barrādī.

In many Ibādī books, there is a report of one incident, when Ĝābir ibn Zayd went out heading for the mosque in order to perform Friday prayer. To his surprise, he met people as they were leaving the mosque because the Friday prayer was over. Ĝābir was deeply affected and exclaimed: “O God! I pledge not to miss it again!”¹⁵⁹

In terms of politics, Ĝābir used to seize the opportunity of the Friday prayer to meet his companions, pupils and followers. The same applies to the *ḥaġġ*. He used to perform *al-ḥaġġ* every year so as to have contact with and teach his followers, and convey his thoughts to

¹⁵⁶ ar-Rabī‘ 2011, Vol. 1: 74.

¹⁵⁷ ar-Rabī‘ *al-Āṭār* year n/a: 66.

¹⁵⁸ aš-Šammāḥi 1970, Vol. 1: 605-606.
al-Barrādī 2014: 36.

¹⁵⁹ Ibn Ĝa‘far 2010, Vol. 2: 410.

al-Kindī 1985b, Vol. 15: 6.

al-Warġilānī 1985, Vol. 2: 57.

Atfayyīš 1985, Vol. 2: 320.

them. Moreover, that gave him the opportunity to meet people in general and get to know current developments in Islamic society.

Fatwa 43 deals with the practice of not reciting Qur’ān verses in the evening, night or morning prayers (termed as “vocal prayers”). Ğābir believes that such an action is not permissible and renders the prayers invalid. One should repeat his prayers in this case. There are several accounts related to the subject.

About evening prayer, Ğābir ibn Zayd stated that ‘Abdallāh ibn ‘Abbās said: “Umm al-Faḍl bint al-Ḥārīt (his mother) heard me reciting *Sūrat al-Mursalāt* (Sura 77). She exclaimed: ‘O Son! Your recitation reminded me [of the Messenger of Allāh]. I heard him reciting the same *sūra* in the evening prayer.’”¹⁶⁰

About night prayer Ğābir ibn Zayd stated that al-Barā’ ibn ‘Azib said: “I prayed the night prayer with the Messenger of Allāh. He recited *Sūrat al-Tīn* (Sura 95).”¹⁶¹

About morning prayer, Tamīm ibn Huways said: “A friend of mine told me that he accompanied Ğābir ibn Zayd while walking down a street before the morning prayer. They went past a mosque. *Iqāma* was declared. They went into that mosque to find that the prayer leader was beginning to recite the first verses of a long *sūra*. Ğābir and his companion left the line and went backwards. Each one of them prayed alone. When they finished, Ğābir said: ‘The morning prayer should be short.’”¹⁶²

Ibādī scholars followed that trend. Unlike other schools, *Ibādīs* recite only *Sūrat al-Fātiḥa* at noon and afternoon prayers. In his *Āṭār*, ar-Rabī’ ibn Ḥabīb reported that Abū š-Ša‘tā’ said at noon and afternoon prayers one must recite only *Sūrat al-Fātiḥa*.¹⁶³

¹⁶⁰ ar-Rabī’ 2011, Vol. 1: 61.

¹⁶¹ Ibid.: 60.

¹⁶² ar-Rabī’ *Āṭār* year n/a: 74.

¹⁶³ Ibid.: 29.

That's why in his *Qawā'id al-Islām* al-Ġayṭālī wrote: "Our scholars, including Ġābir ibn Zayd, agree that at noon and afternoon prayers one must recite (not aloud) only *Sūrat al-Fātiḥa*."¹⁶⁴

Fatwa 44 deals with *ar-rukū'* (kneeling) in prayers. Ġābir believes that *ar-rukū'* is mandatory and missing it renders one's prayer void. Moreover, if a person misses the *ar-rukū'*, *as-suġūd*, or sitting part in prayers, (s)he needs to re-perform that prayer. If that mistake is made by a prayer leader and those who pray behind him follow him, then all of them have to re-perform that prayer. This matter is unanimously agreed upon.

Fatwa 52 deals with reciting Qur'ān verses in vocal prayers. Ġābir deems void any prayer in which a person misses the reciting of some Qur'ān verses after the recitation of *al-fātiḥa* (this also refers to Fatwa No. 43). Here we also find Ġābir referring to the so called Sunna. He states that any action that contradicts with Sunna is null and void.

Fatwa 53 deals with making a drunken man a prayer leader. Ġābir said that a drunken man may not become a prayer leader, and if a person knows that the prayer leader is drunk, (s)he may not pray behind him. The same applies, in Ġābir's opinion, to religiously illiterate men, who do not know how to recite Qur'ān properly.

Fatwa 90 picks up the issue of performing *qaṣr aṣ-ṣalāh* during travel and the duration thereof. Ġābir believes that one must keep praying as a traveller until one returns to his home. Prayer duties are alleviated to the extent that during travel a regular four-unit prayer shall be two-unit only.

¹⁶⁴ al-Ġayṭālī 1998, Vol.1: 369.

Regarding this matter, Ibādī scholars adopt an opinion that is different from the opinion of all other Islamic scholars. They deem a person is a traveler as long as (s)he leaves his town and as a result may perform *qaṣr aṣ-ṣalāh*. They believe that there is no time limitation in this respect.

A great many researchers discussed this matter in detail and quoted the arguments of both parties. That opinion has been firmly established in the Ibādī thought until our present day and Ibādīs unanimously agreed upon it. This issue is one of the few matters about which they have an opinion that is different from that of Sunnis.¹⁶⁵

The following paragraphs contain some of Ğābir ibn Zayd's pronouncements in this respect. In his *Musnad*, ar-Rabī' ibn Ḥabīb reported that Ğābir ibn Zayd narrated from 'Abdallāh ibn 'Abbās that the Prophet "stayed in Mecca in *'ām al-fath* [the year in which he conquered Mecca] fifteen days performing *qaṣr aṣ-ṣalāh*. He did not plan to stay there."¹⁶⁶

According to Ibn Abī Šayba al-'Absī's *Muṣannaf*, Ğābir was asked by Mālik: "I sometimes stay in Kaškar for a year or two in a home-like environment. What about performing *qaṣr aṣ-ṣalāh*?" Ğābir replied: "Pray two *rak'a* performing *qaṣr aṣ-ṣalāh*."¹⁶⁷

According to Muḥammad al-Kindī's *Bayān al-Šar'* and *al-Diyā*, Ğābir was asked about those who travel on business and stay abroad for several years, maybe even five or ten: "What about their performance of prayers?" Ğābir replied: "They are travellers. They need to perform *qaṣr aṣ-ṣalāh*."¹⁶⁸

Matters Related to Fasting

Only one of Ğābir's fatwas deals with fasting (*as-ṣawm*). The fatwa actually deals with two issues: prayer and fasting. The person posing the question was a man who had vast farmlands and he had to

¹⁶⁵ an-Nāmī 2015: 142.

¹⁶⁶ ar-Rabī' 2011, Vol. 1: 51.

¹⁶⁷ al-'Absī 1989, Vol. 2: 208.

¹⁶⁸ al-Kindī 1985b, Vol. 14: 58.

travel to look after them. In this **Fatwa 90**, Ğābir discusses fasting while traveling. He believes that the traveller has the choice: If the traveller can easily fast while travelling, (s)he may fast. Otherwise, (s)he need not fast.

This is consistent with a Hadith quoted by Ğābir ibn Zayd from Anas ibn Mālik. It can be found in ar-Rabī‘ ibn Ḥabīb’s *Musnad*. Anas said: “We travelled with the Messenger of Allāh. Some of us were fasting and some were not. Neither party criticized the other for its choice.”¹⁶⁹

Ğābir’s opinion in this regard was cited by aṭ-Ṭaḥāwī in his *Šarḥ ma ‘ānī al-āṭār*: Ğābir ibn Zayd was asked about fasting in the month of Ramadan while travelling. Ğābir replied the traveller has the choice. If the traveller can easily fast while travelling, (s)he may fast. Otherwise, (s)he need not fast. Allāh made things easier as He allowed us not to fast while travelling.¹⁷⁰

As for Ğābir ibn Zayd’s own choice, he preferred to fast while travelling. According to aṭ-Ṭabarī’s *Tahdīb al-āṭār*, Ğābir ibn Zayd and ‘Ikrima used to fast while travelling.¹⁷¹

It is worth mentioning that Muslim scholars have different opinions about which option is better while travelling: To fast or not to? However, they all agree that while travelling, it is permissible not to fast. The choice is based on the Qur’ān:

أَيَّامًا مَّعْدُودَاتٍ فَمَنْ كَانَ مِنْكُمْ مَّرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ وَعَلَى الَّذِينَ يُطِيقُونَهُ فِدْيَةٌ طَعَامُ مَسْكِينٍ فَمَنْ تَطَوَّعَ خَيْرًا فَهُوَ خَيْرٌ لَهُ وَأَنْ تَصُومُوا خَيْرٌ لَكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ.¹⁷²

Matters Related to Almsgiving

In Ğābir’s letters seven matters relate to almsgiving (*az-zakāt*). **Table 7** (see Appendix page 188) describes their content. Those fatwas deal with the following topics:

- Items that are subject to *az-zakāt* (2 matters)

¹⁶⁹ ar-Rabī‘ 2011, Vol. 1: 69.

¹⁷⁰ aṭ-Ṭaḥāwī 1994, Vol. 2: 70.

¹⁷¹ aṭ-Ṭabarī 1982, Vol. 1: 149.

¹⁷² Qur’ān (2:184).

- Collection of crops for the purpose of calculating *az-zakāt* (1 matter)
- Debt *az-zakāt* (1 matter)
- Estimating the amount of dates borne by palm trees upon which *az-zakāt* is due (1 matter)
- Conversion of charity into *al-ğizya* (1 matter)
- Female adornments and *az-zakāt* (1 matter).

Fatwa 54 deals with debt *az-zakāt* by posing the question as to whether debts are subject to *az-zakāt*? And if yes, who is required to pay such *az-zakāt* - the debtor or the creditor? Ğābir believes that the debtor should keep it until the creditor appears. Moreover, the debtor needs to keep looking for the creditor by asking the creditor's family and tribe. Ğābir states that "to my best knowledge, the debtor does not need to give such money to charity and pay the same amount to the person who claims the debt (the creditor)."

Muslim scholars of different jurisprudence schools have different opinions concerning those matters. Each party has its own point of view and proofs. According to Ğābir ibn Zayd, the debtor does not pay *az-zakāt* on behalf of the creditor.

A similar issue is when a person has a large amount of money but his debts exceed his/her wealth. Must that person pay *az-zakāt* for his wealth? Ğābir believes that he need not. Mālik ibn Anas reported Ğābir's opinion in *al-Mudawwana*: "Ğābir ibn Zayd was asked about a person who receives some money but his debts are greater: Must he pay *az-zakāt*? Ğābir replied: 'He does not have to pay *az-zakat*, until he pays off his debts.'"¹⁷³

Fatwa 77 deals with estimating the amount of dates borne by palm trees, upon which *az-zakāt* is due. Ğābir believes that it is not permissible to estimate the amount of dates borne by palm trees upon

¹⁷³ Ibn Anas 1906, Vol. 2: 37.

which *az-zakāt* is due. He also believes that it is not permissible to force people to rent their farms.

According to a range of Hadith the Prophet used to send someone to estimate the amount of grapes and crops borne by trees upon which *az-zakāt* is due. An example is the statement transmitted by Ibn Māğa, received from ‘Aṭṭāb ibn Usayd.

Nevertheless, scholars have different opinions concerning this matter. The conflict is based on whether this Hadith is valid or not. Those scholars, who believe that the Hadith is valid deem such estimation (called *al-ḥars*) permissible. Other scholars who question the validity of the aḥādīṭ, believe that such estimation is not permissible.¹⁷⁴

Abū Sa‘īd al-Kudamī (d. 361/972), one of the Ibāḍī scholars who believe that *al-ḥars* is impermissible, said: “No scholar of our school adopts or practises *al-ḥars*.”¹⁷⁵ According to *Manhağ aṭ-Ṭālibīn*, “some scholars of our school deem *al-ḥars bid‘a* (a prohibited innovation).”¹⁷⁶ In his *Ma‘āriğ al-āmāl*, as-Sālimī discussed that opinion and concluded that it is wrong.¹⁷⁷

Fatwa 80 handles a case, in which Ğābir tells the poser of the question not to mix charity revenues with *al-ğizya* ones because they are not the same. According to scholars, *al-ğizya* revenues must be deposited in the state’s treasury, because they are used for the same purposes for which *al-fay’* (spoils) revenues are used: This is in the interest of the Muslim nation, and the interest of the Jews and Christians, who pay them as well.

Az-zakāt revenues are used for purposes that are different from that. They are defined in the Qur’ān:

¹⁷⁴ aš-Šīrbīnī 2000, Vol. 2: 86.
Ibn Qudāma 1997, Vol. 4: 175.
ad-Dusūqī 1963, Vol. 1: 453.

¹⁷⁵ Abū Sa‘īd 1985, Vol. 2: 67.

¹⁷⁶ aš-Šaqṣī 1978, Vol. 26: 112.

¹⁷⁷ as-Sālimī 2010, Vol. 7: 650.

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمَوْلَىٰ فَلُوْبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ
وَفِي سَبِيلِ اللَّهِ وَأَبْنِ السَّبِيلِ ۗ 178 .

In his *Ma'āriğ al-āmāl*, as-Sālimī explained the difference between *az-zakāt* and *al-ğizya*. *Az-zakāt* is paid by Muslims, but *al-ğizya* is paid by non-Muslims. The characteristics of *az-zakāt* are defined by divine texts, but those of *al-ğizya* are subject to the Caliphate's discretion.¹⁷⁹

Fatwa 89 deals with a man, who owns several farms. Counting each farm individually, he would not have to pay *az-zakāt* from the crop he receives. Adding the harvest of all of the farms together, he is obliged to pay *az-zakāt*. Ğābir states that this man does not need to harvest the crops from all of farms at the same time. He can do it one by one, if he does not in this way intend to evade paying *az-zakāt*. And the poser of the question only needs to pay *az-zakāt* for the harvest he receives from each farm – one by one. Scholars mention this statement in their books. It is based on an *aḥādīṭ* recorded by several scholars: “Abū Bakr wrote to Anas about *az-zakāt*: ‘Neither may the property of different people may be counted together nor may the joint property may be split for fear of (paying more, or receiving less) *az-zakāt*.’”¹⁸⁰

Fatwa 99 specifies the items that are subject to *az-zakāt*. According to Ğābir they are three: valuables (gold and silver), livestock, and harvests. However, another item, namely items used for trade, is not mentioned here.

This is mentioned, however, in **Fatwa 100**. In this fatwa, Ğābir defined the amount of *zakāt al-anfus* which is nowadays called *az-*

¹⁷⁸ Qur'ān (9:60).

¹⁷⁹ as-Sālimī 2010, Vol. 7: 234.

¹⁸⁰ al-Buḥārī 2002, *aḥādīṭ* No.1450.

as-Sālimī 2010, Vol. 8: 216,

aš-Šaqṣī 1978, Vol. 5: 258.

al-Ḥalīlī 2003: 25.

zakāt al-fitr a *sā'* for each person in the household. Ḡābir believes that neither gemstones nor pearls are subject to *az-zakāt*. The same is valid for any item not covered by the divine texts because *az-zakāt* is imposed only by God. Nothing else may be subject to *az-zakāt* unless such imposition is supported by divine scripture. However, if one keeps any item thereof for trading purposes, then *az-zakāt* applies.

Opposing this opinion, in his *Ātār*, ar-Rabī' ibn Ḥabīb reported that Abū š-Ša'tā was asked about *az-zakāt* regarding gemstones, pearls, and adornments used for trade. He replied: "They are subject to *az-zakāt*."¹⁸¹

In **Fatwa 101**, Ḡābir deals with *az-zakāt* on adornments. He believes that adornments are subject to *az-zakāt* and that women are required to pay *az-zakāt* for their adornments. Many accounts reflect Ḡābir's opinion in this regard, including:

1. Ḍimām reported that Abū aš-Ša'tā said: "Adornments are subject to *az-zakāt*."¹⁸²
2. 'Amr ibn Hārim reported that Ḡābir ibn Zayd said: "Adornments of twenty *miṭqāls* or more (or that are worth two hundred dirhams or more) are subject to *az-zakāt* every year."¹⁸³
3. 'Amr ibn Hārim reported that Ḡābir ibn Zayd was asked if adornments are subject to *az-zakāt*. Ḡābir ibn Zayd replied: "Yes, they are if they weigh twenty *miṭqāls* or more, or if they are worth two hundred dirhams or more."¹⁸⁴

¹⁸¹ ar-Rabī' 2011: 58.

¹⁸² Ibid.: 33.

al-Kindī 1985b, Vol. 18: 29.

al-Ḡayṭālī 2015, Vol. 2: 32.

¹⁸³ Abū 'Ubayd 1998: 543.

¹⁸⁴ Ibn Abī Šayba 1989: 383.

Ibn Ḥazm 1988, Vol. 4: 185.

Ibn Qudāma 1977, Vol. 2: 323.

Matters Related to Pilgrimage

In Ğābir's letters we find three matters related to pilgrimage (*al-ḥaġġ* and *al-ʿumra*). **Table 8** (see Appendix page 189) lists their contents.

Fatwa 37 deals with a man who performed *al-ʿumra* in the *al-ḥaġġ* month and then intended to join it with *al-ḥaġġ* so as to perform *al-ḥaġġ tamattuʿ*. Ğābir's answer means that if that man reaches Makka on the day of *ʿArafa* or later, he may not do so. Otherwise, he may do so.

In this fatwa we find one of Ğābir's well-known opinions: "*Al-ʿumra* can be performed once a year only." This opinion is attributed to him in many Ibādī scripts.

In his *Bayān al-Šarʿ*, Muḥammad al-Kindī reported that Ğābir said: "As the *al-ḥaġġ*, the *al-ʿumra* may only be performed once a year." The same can be found in Aḥmad al-Kindī's *Muṣannaḥ*.¹⁸⁵

According to aš-Šammāḥī's *Īdāḥ*, Aḥmad al-Kindī's *Muṣannaḥ*, and Muḥammad al-Kindī's *Bayān al-Šarʿ*, Ğābir ibn Zayd said: "*Al-ḥaġġ* may be performed once a year only. *Al-ʿumra* may be performed once a year only."¹⁸⁶

In his *Wadʿ*, Šayḥ al-Ġannawunī and Aṭṭfayyīš in his *Šarḥ al-Nīl* unanimously report that: "According to Ğābir ibn Zayd, *al-ḥaġġ* may be performed once a year only. *Al-ʿumra* may be performed once a year only."¹⁸⁷

According to **Fatwa 57**, Ğābir believes that one may make a testament to the effect that a person performs *al-ḥaġġ* on his behalf; and such testament may be implemented after the person who made

¹⁸⁵ al-Kindī 1985b, Vol. 22: 88.

al-Kindī *al-Muṣannaḥ* 1985, Vol. 8: 183.

¹⁸⁶ al-Kindī 1985b, Vol. 22: 160; Vol. 23: 108.

al-Kindī, *al-Muṣannaḥ* 1985, Vol. 8: 102.

aš-Šammāḥī 1970, Vol. 2: 227.

¹⁸⁷ al-Ġannawunī 2015: 357.

Aṭṭfayyīš 1986, Vol. 4, p. 6; Vol. 12: 510.

the testament has passed away by using the money he left for the purpose. In his *Āṭār*, ar-Rabī' ibn Ḥabīb mentions Ḡābir ibn Zayd's fatwa regarding this aspect. Ḍimām reported that Abū š-Ša'tā' said: "If a man makes a testament to the effect that a person performs *al-ḥağğ* on his behalf, his testament may be implemented after his death."¹⁸⁸

In his fatwa, Ḡābir said that one of the deceased woman's relatives may perform *al-ḥağğ* on her behalf using her money as long as he is in need of that money. The point here is the performance of *al-ḥağğ* on behalf of someone else. To this topic we can find many statements attributed to Ḡābir ibn Zayd.

According to ar-Rabī' ibn Ḥabīb's *Musnad*, Ḡābir ibn Zayd received from Anas ibn Mālīk the case of a man who had asked the Messenger of Allāh: "My mother is too old to ride a camel. May I perform *al-ḥağğ* on her behalf?" The Prophet replied: "Yes, you may."¹⁸⁹

According to ar-Rabī' ibn Ḥabīb's *Musnad*, Ḡābir ibn Zayd reported that 'Abdallāh ibn 'Abbās said: "Al-Faḍl ibn 'Abbās was riding behind the Messenger of Allāh when a woman from Ḥaṭ'am came. Al-Faḍl started looking at her and she started looking at him. The Prophet turned al-Faḍl's face to the other side. The woman said: 'O Messenger of Allāh, the command of Allāh has come for His slaves to perform *al-ḥağğ*, but my father is too old to ride. May I perform *al-ḥağğ* on his behalf?' He said: 'Had there been a debt on your father, would you have paid it or not?' She said: 'Yes, I would.' He said: 'So be it.'"¹⁹⁰

According to an-Nasā'ī's *Sunan*, Abū š-Ša'tā' received from 'Abdallāh ibn 'Abbās the story of a man who had asked the Prophet: "My father is an old man. Can I perform *al-ḥağğ* on his behalf?" The Prophet replied: "Don't you think that if your father owed a debt and

¹⁸⁸ ar-Rabī' *Āṭār* year n/a: 39.

¹⁸⁹ ar-Rabī' 2011, Vol. 2: 101.

¹⁹⁰ *Ibid.*, Vol. 2: 100.

you paid it off, that would be sufficient to clear his debt?’ He said: ‘Yes.’ He said: ‘Then perform *al-ḥağğ* on behalf of your father.’”¹⁹¹

According to aṭ-Ṭabarānī’s *Mu‘ğam al-awsāṭ*, Abū š-Ša‘tā’ reported that ‘Abdallāh ibn ‘Abbās said: “A man asked the Prophet: ‘My father is too old to perform *al-ḥağğ*. May I perform *al-ḥağğ* on his behalf?’ The Prophet replied: ‘Don’t you think that if your father owed a debt and you paid it off, that would be good enough?’”¹⁹²

Fatwa 91 deals with a case in which a person intending to perform the *al-ḥağğ* is prevented from doing so for some reason (termed as *al-iḥṣār*). Ğābir’s opinion is that “since one fulfilled the requirements of *al-ḥağğ* and *al-‘umra*, he need not to perform the rite of Hadī (animal sacrifice) for the *al-ḥağğ* for which he requested permission unless he does this as a voluntary act. That voluntary act will be rewarded by Allāh the Most Generous.”

According to the well-known opinion in the Ibādī school, if a person is prevented from the performance of *al-ḥağğ* and (s)he already has acquired his sacrificial animal, then (s)he needs to slay the animal, take off his or her *iḥrām*, and perform *al-ḥağğ* the following year. However, some scholars argue that (s)he needs not to do so. In any case, if that person does not yet have his sacrificial animal, then (s)he has to do nothing. This is applicable according to the fatwa at hand. However, that person may do a voluntary sacrificial act if (s)he so desires. A case like this is mentioned in the Qur’ān:

وَأْتُمُوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ فَإِنْ أُحْصِرْتُمْ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ وَلَا تَحْلِفُوا رُءُوسَكُمْ حَتَّىٰ يَبْلُغَ الْهَدْيُ مَجْلَهُ¹⁹³. (...).

5.3 Jurisprudence Relating to Family Law

As shown in **Table 9** (see Appendix page 189), 39 jurisprudence matters fall under the family law (*fiqh al-usra*), representing almost

¹⁹¹ an-Nasā’ī 2001: 642.

an-Nasā’ī 2001, Vol. 4: 12.

¹⁹² aṭ-Ṭabarānī 1999, Vol. 1: 405.

¹⁹³ Qur’ān (2:196).

one third of Ğābir's fatwas. The jurisprudence topics are: Marriage (*an-nikāḥ*, 27), divorce (*aṭ-ṭalāq*, 4), abstinence (*al-īlā'*, 2), temporary abstinence (*al-ʿidda*, 2), lineage (*al-nasab*, 2), compensated divorce (*al-ḥul'*, 1) and nurturing (*ar-riḍā'*) (1).

Matters related to marriage represent approximately two thirds of the fatwas related to the family law. Matters related to divorce represent 10%. The rest are concerned with matters related to *al-īlā'*, *al-ʿidda*, *al-nasab*, *al-ḥul'*, and *ar-riḍā'*.

Matters Related to Marriage

There are 27 matters related to marriage outlined here which pertain to sexual relations and the dowry (see Appendix **Table 10** page 190). The table shows that the matters covered fall in the following categories:

- Matters related to sexual relations (17 matters)
- Matters related to adultery (7 matters)
- Matters related to dowry (3 matters).

Fatwa 11 is about a man who was deceived, when he bought a female slave. The seller sold her, claiming that she was healthy. However, the buyer found out that she was suffering from a mental disorder. He discovered the deception after sleeping with her. Here Ğābir offers two options:

- The buyer makes a compromise with the seller in which the buyer shall bear compensation for sleeping with her.
- If that compromise cannot be reached, then her price shall be estimated. If her estimated price is less than the above-mentioned compensation, then she shall be owned by the buyer.
- However, the buyer may not return her to the seller and redeem the entire price he paid for her because he slept with her. Doing so means that he received an unlawful increase (the

sexual intercourse) which, in Ğābir's opinion, shall constitute a form of *ar-ribā*.

Fatwa 13 deals with a conversation between a wife and a husband. The husband told his wife that he had committed adultery once, then he told her that he was joking and just wanted to vex her. Such act does not adversely affect the marital relationship. However, he is accountable for such a lie. Therefore, Ğābir believes that the husband has committed a sin as he lied.

The wife needs to pay no heed to that incident. Only if the wife would witness with her own eyes her husband committing adultery then they need to resort to *al-li'ān* (اللعان) [sworn allegation of adultery committed by one's spouse, i.e., 'mutual cursing'].

While Ğābir's wording in this case remains cautious, his judgement – as far as we can derive from similar cases - will have deemed such act as impermissible. The wife may not retain that marital relationship. According to Ğābir, if a spouse commits adultery or a similar sin, the couple must be separated. Ğābir's opinion in this respect is recalled by al-Ğayṭālī in his *Qawā'id al-Islām* as well as his *Qanāṭir al-Ḥayrāt*: “A woman asked Ğābir ibn Zayd: ‘My husband did it with my ewe. May I have its milk?’ Ğābir replied: ‘Do you ask me about the milk of your ewe after your husband has become *ḥarām* for you?’ Ğābir ibn Zayd deemed the milk of that ewe repugnant.”¹⁹⁴

Aṭḥayyīš has a different opinion. According to his *Šarḥ al-Nīl*: If a spouse – not being serious – admits to his or her partner that (s)he has committed adultery, such partner will not be *ḥarām* for the other one. The other party should not believe that confession. When annoyed by thoughts of that matter, the affected party should resist them.¹⁹⁵

¹⁹⁴ al-Ğayṭālī 1998, Vol. 3: 225.

¹⁹⁵ Aṭḥayyīš 1985, Vol. 11: 479.

Fatwa 14 deals with marriage to a man, who has been accused of committing adultery, but who was not convicted. According to Ğābir, the woman to whom that man proposed, may marry him.

Ğābir believes that she may not marry a man who was convicted of and consequently punished for adultery. Abū Hurayra reported that the Messenger of Allāh said: “The adulterer who has been flogged [as a punishment for his sin] shall not marry anyone but a woman who was convicted like him.”¹⁹⁶

Fatwa 16 deals with marriage to one’s mother’s fellow wife. Ğābir deems that as impermissible. According to Ğābir’s practice, it can be inferred that the term “impermissible” in this case means “*ḥarām*”.

Other Ibādī scholars have also deemed this behaviour as impermissible, just as Ğābir ibn Zayd did. Aṭṭfayyīš in his *Šarḥ al-Nīl* wrote: “It is impermissible for a man to marry his mother’s fellow wife, who is/was married to a man other than his father, whether that marriage was before or after that son’s birth, and whether she was a fellow wife before or after she became his mother-in-law, and whether his own mother is alive or dead, and whether another man, other than his father, married that son’s mother and her fellow wife one after the other.”¹⁹⁷

Fatwa 17 deals with pre-marriage relationships and their affect on marriage. In **Fatwa 14** we came to know that prohibited pre-marriage relationships make the marriage of both parties with each other unlawful. Unlike scholars of all other Islamic schools, Ibādī scholars have adopted this definite opinion. Non-Ibādīs believe that repentance makes such marriage lawful.

¹⁹⁶ Ibn Ḥanbal 1994, Vol. 2: Hadith 621.

Abū Dāwūd 2001:Hadith 328.

¹⁹⁷ Aṭṭfayyīš 1985, Vol. 10: 177.

Ĝābir expresses his belief that committing acts such as gazing and touching before marriage are not as grave as adultery, and do not render both parties unmarriageable to each other. This opinion is also adopted by at-Tamīnī as mentioned in *Šarḥ al-Nīl*.¹⁹⁸ However, according to the prevailing strict opinion in Ibādī school, looking at and touching the other party's pudenda renders both parties unmarriageable to each other.¹⁹⁹

The author of *Manḥağ al-Ṭālibīn* comments on the issue: "... If a man, deliberately or undeliberately, touches the genitals of a woman, he may not marry her or her daughter. Some scholars believe that this applies only if that touch was on purpose. It is reported that Muḥammad ibn Maḥbūb said: 'If a man touches a woman's genitals, mistaking her for his wife, and she turns out to be his mother-in-law, his wife will be *ḥarām* for him.' So, one should be very careful in this regard. It is said: Sexual things may ruin your life."²⁰⁰

Another version of a verdict in such a case was attributed to Ĝābir ibn Zayd in Ibn Abī Šayba al-ʿAbsī's *Muṣannaḥ*. Ĝābir ibn Zayd was asked about a man, who saw or touched with his hand his female slave's genitals; then, later, he gave her to his son as a gift. Is he allowed to have vaginal sex with her? Ĝābir replied: "No, neither the father nor the son may do so."²⁰¹

Fatwa 23 explains how sexual intercourse is performed in a lawful way. This is what is written in the Holy Qur'ān:

نِسَاؤُكُمْ حَرْثٌ لَّكُمْ فَأَتُوا حَرْثَكُمْ أَنَّى شِئْتُمْ وَقَدِّمُوا لِأَنفُسِكُمْ (...)²⁰²

Ĝābir explains the meaning of this Quranic verse. By doing so he refutes the misconception that this verse allows men to practise anal sex with their wives. That's why Ĝābir uses the term 'vaginal sex'.

¹⁹⁸ Ibid., p. 160.

¹⁹⁹ as-Sālimī 2010, Vol. 2: 423.

²⁰⁰ aš-Šaqṣī, 1978, Vol. 15: 40.

²⁰¹ al-ʿAbsī 1989, Vol. 3: 480.

²⁰² Qur'ān (2:223).

Moreover, he explains that the couple may practise vaginal sex taking any position they like.

According to Muhammad al-Kindī's *Bayān al-Šar'* and Aḥmad al-Kindī's *Muṣannaḥ*, Ğābir ibn Zayd asked 'Ā'īša how the Messenger of Allāh practised his intimate relations with his wives. She replied: "[He used to do so] while sitting, lying on his back, or standing. He did not take the posture adopted by animals [in this respect]."²⁰³

Ğābir ibn Zayd asserts that it is unlawful to practise anal sex with one's wife. Many of Ğābir's pronouncements support that.

According to *Ağwibat Ibn Ḥalfūn*, Ğābir ibn Zayd received from 'Abdallāh ibn 'Abbās that the Prophet said: "Allāh is not too shy to tell the truth. Do not practise anal sex with women. Those who practise it shall dwell in fire forever."²⁰⁴

According to Ibn Abī Šayba al-'Absī's *Muṣannaḥ*, Ğābir ibn Zayd said: "Practising anal sex is more strictly prohibited than other things." Qatāda commented: "We think that Ğābir meant that it is more prohibited than sins that are punishable with stoning."²⁰⁵

According to as-Suyūṭī's *Durr al-Manṭūr*, both Ibn Abī Šayba and Ibn Abī d-Dunyā reported that Ğābir ibn Zayd said: "Practising anal sex is more prohibited than adultery."²⁰⁶

In **Fatwa 36** Ğābir wants to clarify an error, which many scholars of his time committed while interpreting some of 'Abdallāh ibn 'Abbās's words. They took them to pertain to a Muslim who committed adultery. As one of the pupils of 'Abdallāh ibn 'Abbās, Ğābir explains that they only apply to non-Muslims who fornicated and then, later, embraced Islam.

Ğābir ibn Zayd's fatwa can be found in *Ağwibat Ibn Ḥalfūn*: From 'Amr ibn Dīnār it is said that Ğābir ibn Zayd commented on

²⁰³ al-Kindī 1985b, Vols. 49-50: 312.

al-Kindī 1985b, Vol. 2: 111; Vol. 35: 152.

²⁰⁴ Ibn Ḥalfūn 1974: 54.

²⁰⁵ al-'Absī 1989, Vol. 5: 497.

²⁰⁶ as-Suyūṭī 2011, Vol. 3: 499.

‘Abdallāh ibn ‘Abbās’s quotation “a relationship that began as an act of adultery and eventually became a marriage!”, saying that ‘Abdallāh ibn ‘Abbās meant a case in which a man and a woman committed adultery together before they embraced Islam. After they embrace Islam, repent, and become righteous, they can marry each other.²⁰⁷

However, the author found a report that – to a certain extent - contradicts with this fatwa. It is also attributed to Ğābir ibn Zayd and repeated by Muḥammad al-Kindī in his *Bayān al-Šar‘*: A man had committed adultery with a woman before they embraced Islam. May they marry each other now? The answer is: Ğābir was reported to deem that impermissible.²⁰⁸

Fatwa 46 deals with Islam’s attitude towards prostitutes and marriage to them. Practicing that business is prohibited as Ğābir deems the prostitute as bad as the two parties who committed adultery. According to Ğābir, it is impermissible to marry a prostitute.

Ğābir ibn Zayd’s fatwa seems to denote that the prostitute shall also be punished. However, he does not specify her punishment. He may mean *ta‘zir* [punishment for offences at the discretion of the judge or ruler of the state]. Many Ibādī scholars have a different opinion.

Fatwa 47 deals with a woman from Ḥurāsān. She had a husband there. When she left Ḥurāsān for a “Land of War”, where she was allowed to marry according to the religion and customs practiced there, she got married again.

The question doesn’t mention the region, but apparently it was also inhabited by Muslims. The text doesn’t give any clues about the sect prevailing there. When the woman returned to Ḥurāsān, she found that her first husband had passed away. The question this case brought

²⁰⁷ Ibn Ḥalfūn 1974: 42.

²⁰⁸ al-Kindī 1985b, Vols. 47-48: 247.

up, was whether this woman can again get married to a Muslim. Ġābir marks her behaviour as unlawful, and at the same time demands the sender not to present him questions like this one again.

There is a discrepancy in this fatwa that cannot be resolved. It speaks of a “Land of War”, but the text assumes that the subjects there were Muslims. In old texts “Land of War” means the land controlled by *mušrikīn*, who are at war with Muslims. It is a term describing territories opposed to the “Land of Islam”. In between there can exist a “Land of Convention”, which is a land controlled by non-Muslims, who have entered with Muslims in a peace treaty.

The second problem here is the existence of an Islamic sect that believes that a married woman may marry another man. Muslim sects, including Ibāḍīs, Sunnis, and Shiites, generally declare and enforce the rule that a married woman may not marry another man.

In **Fatwa 55**, without offering his own explicit interpretation, Ġābir ibn Zayd reports that ‘Abdallāh ibn ‘Abbās believes that if a man accuses his female slave of committing adultery, he may not retain her. In his *Muṣannaf*, Aḥmad al-Kindī provides an explanation of this issue: If a man accuses his wife of adultery, the issue shall be referred to the judge, and they resort to *al-mulā‘ana* (mutual cursing). The couple shall be separated, and they will never be allowed to marry each other again in the future. If the wife admits that she has committed adultery, her husband may not retain her. If a married man commits adultery with one of his female slaves, they may not marry each other. This ruling is based on the Qur’ān:

الرَّانِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ وَالزَّانِيَةُ لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ وَحُرْمٌ ذَلِكَ عَلَى
الْمُؤْمِنِينَ.²⁰⁹

This applies when the male and female adulterers have been convicted of and punished for their offense. In a case of fornication, on the other hand, it is unanimously agreed among all Islamic schools

²⁰⁹ Qur’ān (24:3).

of thought that a male fornicator may marry only a female fornicator, and that a female fornicator may only marry a male fornicator.²¹⁰

However, there is a report attributed to Ğābir ibn Zayd in which he gives a different opinion: ar-Rabī‘ ibn Ḥabīb received word from Ḍimām that Ğābir ibn Zayd was asked about a husband who accused his wife of adultery, but preferred not to resort to *al-mulā‘ana*. Ğābir ibn Zayd said: “He may have sexual relations with her. He is not to blame if he does so.”²¹¹

The accusation itself is not sufficient; without evidence the strict interpretation need not apply.

To make both versions consistent with each other, it can be said that Ğābir ibn Zayd in the first case quoted ‘Abdallāh ibn ‘Abbās in this respect. Ğābir ibn Zayd’s own opinion is recorded by ar-Rabī‘ ibn Ḥabīb in the latter case.

Fatwa 56 deals with one of the problems that may be faced by business partners: A partner betrays the other and breaches his rights. In this case two men jointly bought a female slave. One of them had sexual relations with her. Ğābir ibn Zayd believes that such an act is a case of fornication, because the female slave is jointly owned by the two men, and thus neither of them may have sexual relations with her.

Since that man committed such an offense, his share of that female slave shall be reduced by 50% as a punishment. If she gives birth to a boy, the price of both of the female slave and her baby shall be estimated. The betrayed partner shall be given half of the price of the child.

Fatwa 58 deals with free women’s rights. One of them is that her husband may not make a female slave her fellow wife. Ğābir deplores the man’s actions. In his opinion, the man needs either to be

²¹⁰ al-Kindī 1985b, Vol. 32: 203.

²¹¹ ar-Rabī‘ *Āṭār* year n/a: 35.

separated from that female slave or his legal wife will have the choice: she may retain her own marriage or be divorced.

Ibn Abī Šayba also stated that Ğābir ibn Zayd reported that ‘Abdallāh ibn ‘Abbās said: “If a man is married to a female slave and then marries a free woman, the slave wife shall be deemed divorced.”²¹²

In the light of that text, Ğābir believes that a man may not be married to a free woman and a slave at the same time.

Many Ibādī scholars have discussed the issue and its variants, underlining its importance to fatwa-seekers. In his book *Fiqh al-Imām Ğābir ibn Zayd*, Bakkūsh deals with that issue from a different perspective. He claims that Ğābir ibn Zayd had stated that a man may resort to marry a female slave in order to avoid having illicit sexual relations, and if he is not rich enough to marry a free woman. Both al-Ġašāš in his *Aḥkām al-Qur’ān*²¹³ and Ibn Ḥazm in his *al-Muḥallā*²¹⁴ report that Ğābir ibn Zayd said: “If a man is to have sexual relations with a female slave, he may marry her.”

But apparently Ğābir also gives a limit to relations like these. In his *Mudawwana*, Abū Ġānim al-Ḥurāsānī wrote: “I asked Abū l-Mu’arriġ: ‘May a free man marry a female slave?’ He replied: ‘Abū ‘Ubayda told me that Ğābir ibn Zayd reported that ‘Abdallāh ibn ‘Abbās said: ‘A person may marry a female slave only if he will have sexual relations with her. However, a free man may not marry more than one female slaves.’”²¹⁵

Seemingly contradictory, both aš-Šāfi’ī in his *Umm* and al-Bayhaqī in his *Sunan al-kubrā* reported that ‘Attā asked Abū š-Ša‘tā (i.e. Ğābir ibn Zayd): “What is your opinion regarding marriage to

²¹² Ibn Abī Šayba 1989, Vol. 3: 468.

²¹³ al-Ġašāš 1993, Vol. 2: 158.

²¹⁴ Ibn Ḥazm 2015, Vol. 8: 32.

²¹⁵ al-Ḥurāsānī 2006, Vol. 2: 40.

al-Ḥurāsānī 2006, Vol. 1: 197.

female slaves?”, and Ğābir replied: “We are not allowed to marry female slaves.”²¹⁶

To resolve the apparent contradiction, it is necessary to include the question of wealth. In his *Sunan al-kubrā*, al-Bayhaqī states that Ğābir ibn Zayd was asked: “May a free man, who can afford to marry a free woman, marry a slave?” Ğābir replied: “Only those who cannot afford to marry free women and fear forbidden sexual relations may marry a female slave.”²¹⁷

Fatwa 59 deals with masters’ rights in terms of their male and female slaves. A master may, at any time, force his male slave to marry or divorce his female slave. Other sources provide more statements attributed to Ğābir ibn Zayd in this respect.

In his *Āṭār*, ar-Rabī‘ ibn Ḥabīb reported that Abū aš-Ša‘ṭā said: “In my opinion, a male slave does not have the right to divorce.”²¹⁸ [His opinion is based on the Quranic verse: (عَبْدًا مَّمْلُوكًا لَا يَقْدِرُ عَلَىٰ شَيْءٍ).]²¹⁹

According to Ibn Ḥazm’s *Muḥallā*, ‘Abd ar-Razzāq in his *Muṣannaf* reported that Abū š-Ša‘ṭā said: “A male slave may divorce his wife only if he has his master’s approval. Even if a male slave twice divorces his wife, his master has the choice to approve or not approve such divorce.”²²⁰

According to Aḥmad al-Kindī’s *Muṣannaf*, Ğābir was asked about a man who bought a married female slave: What is he allowed to do? Ğābir replied: “The master may have sexual relations with her only if she gets divorced. If her husband is a male slave, then the master has the choice: he may have them divorced or keep them married to each other.”²²¹

²¹⁶ aš-Šāfi‘ī 1993, Vol. 5: 11.

al-Bayhaqī 2004, Vol. 7: 174.

²¹⁷ al-Bayhaqī 2004, Vol. 7: 174.

²¹⁸ ar-Rabī‘ *Āṭār* year n/a: 48.

²¹⁹ Qur’ān (16:75).

²²⁰ ‘Abd ar-Razzāq 1983, Vol. 7: 239.

Ibn Ḥazm 2015, Vol. 9: 505; Vol. 10: 230-231.

²²¹ al-Kindī 1985b, Vols. 55-56: 64.

According to other accounts, Ğābir ibn Zayd's opinion in this case was questioned by some well-known scholars of his era. For instance, Sa'īd ibn Ğubayr's and Ğābir ibn Zayd's opinions were completely at odds in this regard. The former strictly opposed the latter's judgement and he even said that Ğābir was not telling the truth. This, by the way, is one of the very few times that scholars of that era commented harshly on their colleagues. Since the dissent and the accusation are aimed at Ğābir, they are quite remarkable.

According to 'Abd ar-Razzāq's *Muṣannaḡ*, Ayyūb reported that he said to Sa'īd ibn Ğubayr: "Ğābir ibn Zayd believes that a male slave's divorce is subject to his master's approval." Sa'īd ibn Ğubayr replied: "This is not true. It is the woman's husband, who has absolute authority over divorce."²²²

According to *Sunan Sa'īd ibn Mansūr* and Ibn Abī Šayba al-'Absī's *Muṣannaḡ*, Ayyūb said that he asked Sa'īd ibn Ğubayr about a case, in which the master agrees to let his male slave marry: Who will have the authority over divorce? Sa'īd ibn Ğubayr replied: "The husband will." Ayyūb said: "According to Ğābir ibn Zayd, the master has such authority." Sa'īd ibn Ğubayr replied: "Ğābir ibn Zayd lied."²²³

Fatwa 60 affirms Ğābir's opinion regarding the issue of a master's authority over his slaves' marriage and divorce (see Fatwa No. 59). In the present case, Ğābir's statement involves the question of temporary abstinence. He believes that *al-'idda* of the captive female slave starts as of the day of divorce, if she was divorced after she and her husband had embraced Islam. Ğābir also believes that free women and female slaves are treated the same in terms of *al-'idda*. However, if the female slave was divorced before she and her husband had embraced Islam, there is no need for a divorce under Islamic law

²²² 'Abd ar-Razzāq 1983, Vol. 7: 239.

Ibn Baraka 2007, Vol. 2: 277.

al-Qurṭubī 2006, Vol. 5: 142.

²²³ Ibn Maṣṣūr 1982, Vol. 1: 210, 243.

at all. In this case, the *'idda* provision does not apply, but her master needs to make sure that she is not pregnant before letting her marry again, or before he takes her as a concubine.

Fatwas 69, 70 and 71 deal with women's dowry and establish that mutual consent is the cornerstone for a satisfactory solution. A dowry may be in the form of cash (dirhams and dinars), or a defined price of a number of palm trees, crops, etc. Conditions both parties agree upon shall prevail.

If no agreement is reached, then it all depends on the woman's choice. She may accept a dowry in the form of cash, palm trees etc., because the acceptance or the refusal of a dowry is one of her rights. Her guardian may not waive or change the value of the dowry. Neither may he make any agreements with the future husband without the consent of the future wife.

If the dowry has not been initially specified, it shall be specified in accordance with the custom adopted by the future wife's tribe.

Dowry is one of the marriage conditions: Several Hadith *ahādīth* were received from Ğābir ibn Zayd in this respect, including the following. According to ar-Rabī' ibn Ḥabīb's *Musnad*, Ğābir ibn Zayd transmitted from 'Abdallāh ibn 'Abbās that the Messenger of Allāh said: "Divorce may only apply after marriage. *Az-Zihār* (declaring one's wife as untouchable by saying: 'You are like my mother!') may only apply after marriage. No slave may be freed before (s)he is owned. No marriage may be completed without a guardian, a dowry and two witnesses."²²⁴

Fatwa 74 deals with a specific aspect in the Islamic family law, namely the effects of nurturing on marital relationships. These include:

- A man may not be married to two sisters at the same time.

²²⁴ ar-Rabī' 2011, Vol. 2: 134, 138, 173.

- After separation, the man may not re-marry any of the two sisters.

It is worth mentioning that the content of Fatwa 74 was also recorded by Abū Ġānim al-Ḥurāsānī in his *Mudawwana*: A man married a woman and had sexual relations with her. Later, he married another woman, and had sexual relations with her, too. Then, he found out that both wives are sisters. According to Ġābir ibn Zayd, such a man shall be separated from both wives. However, he may marry any other marriageable woman.²²⁵

According to statements attributed to Ġābir ibn Zayd, a man and a woman may not marry each other if they were nurtured by the same nurse when they were younger than two years old. Unlike all other Islamic jurisprudence schools, the Ibādī school adopts this general verdict. According to all other Islamic jurisprudence schools, a man and a woman may not get married to each other if they were nurtured more than five times by the same woman when they were younger than two years old.

According to the Ibādī Qur'ān commentator Abū l-Hawāriyan (sometimes the name is given as al-Ḥawārīon), Ġābir ibn Zayd said that they were deemed unmarriageable to each other if they were nurtured only once by the same woman when they were younger than two years old.²²⁶

Nurturing has the same effect of lineage and for instance results in the rule that children nurtured by the same foster-mother should be treated as siblings. According to ar-Rabī' ibn Ḥabīb's *Musnad*, Ġābir ibn Zayd stated that 'Ā'īša said: "Aflaḥ, my foster-uncle, sought my permission to enter the house after ḥiḡāb was imposed on women. However, I did not permit him. When the Messenger of Allāh came home I told him about that. He said: 'You better admit your uncle (into the house), for nurturing has the same effect of lineage.'"²²⁷

²²⁵ al-Ḥurāsānī 2006, Vol. 1: 199; Vol. 2: 27-28.

²²⁶ Abū al-Ḥawārī 1991, Vol. 1: 216.

²²⁷ ar-Rabī' 2011, Vol. 2: 136-137.

According to ar-Rabī‘ ibn Ḥabīb’s *Āṭār*, Abū aš-Ša‘tā said: “Nurturing and lineage have the same effect of making some people unmarriageable to each other.”²²⁸

It is well-known that some companions suggested that the Messenger of Allāh wanted to be married to one of his female cousins, namely the daughter of Ḥamzah.²²⁹ However, he said: “She is the daughter of my foster-brother.” Therefore, he did not marry her. That incident is mentioned by Qatāda as transmitted from Ğābir ibn Zayd.²³⁰

If it is established that a nurse nurtured both wives of a man, both wives shall be treated as foster-sisters and need to be divorced from the man. This is the second aspect of Ğābir’s fatwa. According to the Qur’ān, a man is not allowed to be married to two sisters at the same time.

حُرِّمَتْ عَلَيْكُمْ... وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ²³¹ (...)

Ğābir ibn Zayd commented: “Breaching such provision is prohibited.”

The third aspect of Ğābir’s fatwa means that after separation, that man may not re-marry any of those foster sisters. This is Ğābir’s opinion, which prevails in the Ibādī jurisprudence school. Since the man’s marriage with such foster-sisters was unlawful, both women are deemed un-marriageable for him.

Fatwa 75 deals with types of women, whom men may not marry. According to the Qur’ān:

وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ إِلَّا مَا قَدْ سَلَفَ إِنَّهُ كَانَ فَاحِشَةً وَمَقْتًا وَسَاءَ سَبِيلًا²³²

²²⁸ ar-Rabī‘ *Āṭār* year n/a: 35.

²²⁹ Both Prophet Muḥammad and his uncle Ḥamzah were nurtured by the same woman, Tuwayba.

²³⁰ Muslim 1997, Vol. 2: 1071.

Ibn Abī Šayba 1989, Vol. 3: 549.

al-Ṭabarānī 1999, Vol. 3: 139.

Abū Nu‘aym al-Iṣfahānī 1985, Vol. 4: 121.

Ibn Ḥazm 2010, Vol. 8: 193; Vol. 9: 204.

Ibn ‘Abd al-Barr 1992, Vol. 1: 29.

an-Nawawī 1972, Vol. 10: 24.

²³¹ Qur’ān (4:18).

According to Ibādī scholars, a woman becomes unmarriageable for a man as soon as his father enters into a marriage contract with her (even before consummation). The aim is to treat fathers with respect and dignity. Ğābir refers to the circumstance that men typically dislike their wives' ex-husbands, ex-fiancés etc. If a man is allowed to marry his father's ex-wife, he could begin to hate his own father.

Fatwa 76 deals with a ruling discussed in Fatwa No. 74: It is unlawful to be married to two sisters at the same time. Here Ğābir stresses that in this regard, free women and slaves are treated the same.

That ruling is attributed to Ğābir ibn Zayd by ar-Rabī' ibn Ḥabīb in his *Āṭār*: When asked about a man's issue with two female slaves, Ğābir replied: "If he had sexual relations with one of them and then left her, he may have sexual relations with the other sister only if he sells the first sister, gives her to someone as a gift, or marries her off to someone else."²³³

In this context, another fatwa attributed to Ğābir by Ibn Qudāma in his *Muġnī* might be mentioned: "A man may not have sexual relations with two female slaves at the same time. This opinion is adopted by a range of scholars, including (...) Ğābir ibn Zayd (...)." ²³⁴

Fatwa 85 deals with a man's ejaculation outside the woman's vagina during a sexual intercourse (termed as *al-ʿazl*). This was one of the topics of family law, which were discussed extensively in the first Hiġri century. It was first questioned when the Messenger of Allāh was still alive. Ğābir ibn Zayd received from Abū Saʿīd al-Ḥudrī the Hadith in which that question was asked. According to ar-Rabī' ibn Ḥabīb's *Musnad*, Abū ʿUbayda reported from Ğābir ibn Zayd that Abū Saʿīd al-Ḥudrī said: "We went with the Messenger of Allāh in the

²³² Qur'ān (4:22).

²³³ ar-Rabī' *Āṭār* year n/a: 64.

²³⁴ Ibn Qudāma 1997, Vol. 7: 96.

ġazwa of Banī l-Muṣṭaliq and we captured some captives, and the long separation from our wives was pressing us hard. We thought it best to practice *al-‘azl* (coitus interruptus). We asked Allāh’s Messenger (whether it was permissible). He said, ‘It is unobjectionable. Any soul, (that Allāh has) destined to exist, up to the Day of Resurrection, will definitely come into existence.’”²³⁵

According to this Hadith practising *al-‘azl* is permissible. However, scholars believe that in terms of practising *al-‘azl*, unlike female slaves, free women must be asked for permission beforehand. This is also stated by Ğābir.

A number of Ğābir ibn Zayd’s pronouncements support his opinion mentioned here. According to Abū Ğānim al-Ḥurāsānī’s *Mudawwana*, Ğābir ibn Zayd was asked about *al-‘azl*, and his answer was: “*Al-‘azl* is unobjectionable. All human beings destined to be created will be created, even if their origin is put inside a solid rock.”²³⁶

According to Ibn Abī Šayba al-‘Absī’s *Muṣannaḡ*, Ğābir said: “A man may practise *al-‘azl* with his free wife only with her consent.”²³⁷

According to Muḡammad al-Kindī’s *Bayān al-Šar‘* and Aḡmad al-Kindī’s *Muṣannaḡ*, Ğābir ibn Zayd recorded that ‘Abdallāh ibn ‘Abbās believed that practising *al-‘azl* is permissible under the condition that a man has his free wife’s consent before practising *al-‘azl* with her. ‘Abdallāh ibn ‘Abbās said: “It is like your own field. You have the choice: either to irrigate it or not.”²³⁸

Fatwa 96 deals with *al-‘idda*. A woman is confused because of her unexpected menstruation. She believed that her menstrual cycle had stopped. However, she experienced bleeding. In his statement

²³⁵ ar-Rabī‘ 2011, Vol. 2: 137-138.

²³⁶ al-Ḥurāsānī 2006, Vol. 2: 142.

²³⁷ al-‘Absī 1989, Vol. 3: 513.

²³⁸ al-Kindī 1985b, Vol. 49-50: 313.
al-Kindī 1985b, Vol. 35: 158.

Ğābir indicates under which circumstances the woman shall be subject to the provisions for women who no longer menstruate (*al-‘idda* equals three months), or subject to the provisions for fertile women (*al-‘idda* equals three menstruations).

In **Fatwa 97** Ğābir states that whatever *al-‘idda* a woman is subject to, she is not allowed to accept marriage during her waiting period. If this happens, the man and woman must be separated, as this action is in contradiction to Qur’ān and Sunna.

In **Fatwa 102** Ğābir ibn Zayd deals with the effect of negligence of paying *az-zakāt* for female adornments. According to him, such *az-zakāt* is mandatory. But regarding the handling of such a case, Ğābir distinguishes between a woman who accepts the obligation of *az-zakāt*, and one who doesn’t.

If a wife denies that *az-zakāt* is obligatory, then she is deemed a disbeliever and the marriage shall be terminated. However, if she generally accepts that *az-zakāt* is mandatory, but simply doesn’t pay for it for some reason not given in this case, then no further action is needed. In this case she will be treated as Ğābir suggests in Fatwa 101.

Fatwa 103 deals with marriage in the presence resp. absence of the bride’s guardian. Here Ğābir asserts what he established in many statements attributed to him: a marriage contract needs to meet the requirements imposed by the Messenger of Allāh, including the guardian requirement. He quotes ‘Abdallāh ibn ‘Abbās so as to support his opinion. According to Ğābir ibn Zayd,

- A marriage contract may not be made in the absence of the guardian.
- If a guardian is present, no agents may be used to represent him.

- If the woman does not have a guardian, then the judge shall be her guardian. This opinion was attributed to Ğābir ibn Zayd by Muḥammad al-Kindī in his *Bayān al-Šar‘*: According to Ğābir ibn Zayd, “If the woman does not have a guardian, then she may resort to the judge. The latter may play the role of her guardian or appoint a man as her guardian. In this case, her guardian shall marry her to a man she accepts as a husband as long as a dowry is paid and two witnesses are present ...”²³⁹
- If a person gets married to a woman in the absence of her guardian and sleeps with her, his marriage shall be null and void and the marriage contract shall be forthwith terminated. That man may never be married to that woman in the future.
- If a marriage contract is made without the consent of the guardian and consummation takes place, then the guardian shall have the choice. He may retain or terminate that marriage contract.

It is important to note that both Muḥammad al-Kindī, in his *Bayān al-Šar‘*, and Aḥmad al-Kindī, in his *Muṣannaḥ*, quoted the entire fatwa. This means that both of them had access to Ğābir’s letters.²⁴⁰ The following is a summary of Ğābir ibn Zayd’s pronouncements regarding marriage and the guardian requirement:

According to ar-Rabī‘ ibn Ḥabīb’s *Musnad*: Ğābir ibn Zayd received from ‘Abdallāh ibn ‘Abbās that the Messenger of Allāh said: “There is no divorce before marriage. *Az-Zihār* may only apply after marriage. There is no manumission before taking possession. No marriage is completed without a guardian, a dowry and two witnesses.”²⁴¹

According to Ibn ‘Abī Šayba al-‘Absī in his *Muṣannaḥ*, Ibn ‘Abd al-Barr in his *Tamhīd*, al-Qurṭubī in his *Tafsīr*, and Ibn Qudāma

²³⁹ al-Kindī 1985b, Vol. 47-48: 341-342.

²⁴⁰ Ibid.:363-364.

al-Kindī 1985b, Vol. 32: 325-326.

²⁴¹ ar-Rabī‘ 2011: 134, 138, 173.

in his *Muġnī*: Ġābir ibn Zayd said: “No marriage contract may be made in the absence of the bride’s guardian and two witnesses.”²⁴²

According to ar-Rabī‘ ibn Ḥabīb’s *Ātār*, Ḍimām reported that Abū š-Ša‘tā (i.e. Ġābir ibn Zayd) deemed it impermissible to conduct a marriage contract in the absence of the bride’s guardian and a group of the tribe members.²⁴³

This verdict is also transmitted by Ibn Ḥalfūn, who quotes Ḍimām that Abū š-Ša‘tā deemed it impermissible to conduct a marriage contract in the absence of the bride’s guardian and a group of the tribe members.²⁴⁴ Ibn Ḥalfūn also cited several other statements attributed to Ġābir ibn Zayd in this matter.²⁴⁵

According to Muḥammad al-Kindī’s *Bayān*, Ġābir ibn Zayd said: “No marriage contract may be conducted without the bride’s guardian. If a couple is found in breach of that, a (punitive) action shall be taken (...).”²⁴⁶

According to Ibn ‘Abī Šayba, a woman asked Ġābir ibn Zayd: “I have conducted my marriage by myself [i.e. in the absence of her guardian].’ Ġābir said: ‘Now you tell me that you have committed adultery.’ The woman was shocked and left.”²⁴⁷

According to Sa‘īd ibn Manšūr, Ġābir ibn Zayd was working on a falaġ (irrigation channel) when a woman came and asked him: “Are you Abū š-Ša‘tā?’ He said: ‘Yes, I am.’ She said: ‘What do you think of a woman who conducted her marriage contract by herself [i.e. in the absence of her guardian]?’ He said: ‘According to the Arabs’ tradition that woman is called “a prostitute”.’ She exclaimed: ‘Your

²⁴² Ibn Abī Šayba 1989, Vol. 3: 454.
Ibn ‘Abd al-Barr 1967, Vol. 19: 84.
Ibn Qudāma 1997, Vol. 7: 6, 8.

al-Qurṭubī 2006, Vol. 3: 72.
²⁴³ ar-Rabī‘ *Ātār year n/a*: 40.

²⁴⁴ Ibn Ḥalfūn 1974: 69.

²⁴⁵ *Ibid.*: 66, 71.

²⁴⁶ al-Kindī 1985b, Vol. 47-48: 341-342.

²⁴⁷ Ibn Abī Šayba 1989, Vol. 3: 458.

words are very obscene!’ He replied: ‘The person who committed unlawful intercourse is more obscene.’²⁴⁸

Fatwa 105 refers to a man that vowed not to intercourse with his wife. This fatwa deals with a case in which a man told his wife that he believes that she has become *ḥarām* for him. Ğābir’s answer is that it depends on the man’s intention: What did he really mean with saying so? If he really means that his wife has become *ḥarām* for him, then his wife will be so (just as in a case of irrevocable divorce).

According to al-Warġilānī’s *‘Adl wal-inṣāf*, this matter was controversial in Ğābir’s era. Companions and prominent scholars had different opinions about that matter. According to Ğābir ibn Zayd and Masrūq ibn al-Aġda‘, if a man tells his wife that he believes that she has become *ḥarām* for him, then - in ‘Alī’s opinion - she has become just like a woman who was irrevocably divorced. Contradicting this view, ‘Umar ibn al-Ḥaṭṭāb believes that she has become just like a woman who was revocably divorced. According to a third opinion shared by other companions, she has become just like a woman who was revocably divorced but for whom the grace period of re-marriage to her ex-husband has expired.

Regarding the husband, Masrūq, Ğābir ibn Zayd and other jurists believe that in a case like this the man needs to expiate for a broken oath. This opinion was eventually adopted by the vast majority of scholars.²⁴⁹ Ğābir’s judgement in that matter is transmitted in many versions, including three statements found in ar-Rabi‘ ibn Ḥabīb’s *Ātār*:

Ḍimām reported that Abū š-Ša‘tā was asked about a case in which a man had said to his wife: “My penis is now *ḥarām* for your vagina (i.e. I am no longer allowed to have intercourse with you!)” Ğābir said: “His words would not prevent him from having

²⁴⁸ Ibn Maṣṣūr 1982, Vol. 1: 176.

²⁴⁹ al-Warġilānī 1985, Vol. 2: 5-6.

intercourse with her. Besides, his words do not constitute a divorce. Now I wonder if he needs to expiate for a broken oath or not.”²⁵⁰

Dimām reported that Abū š-Ša‘tā was asked about a case in which a man said: “Now permissible things have become *ḥarām* for me.” Ğābir said: “He needs to expiate for a broken oath.”²⁵¹

Dimām reported that Abū š-Ša‘tā was asked about a case in which a man said: “Now permissible things have become *ḥarām* for me.” That man has a wife and his above-mentioned words were about her. However, he does not mean to divorce her. Ğābir said: “He needs to expiate for a broken oath.”²⁵²

According to Abū Ğānim al-Ḥurāsānī’s *Mudawwana*, Ğābir ibn Zayd reported that ‘Abdallāh ibn ‘Abbās said: “When someone says that permissible things have become *ḥarām* for him/her, (s)he needs to expiate for a broken oath.”²⁵³

According to ad-Dāraqūṭnī, Ğābir ibn Zayd reported that ‘Abdallāh ibn ‘Abbās was asked about a man who said that permissible things have become *ḥarām* for him. ‘Abdallāh ibn ‘Abbās said: “He needs to expiate for a broken oath.”²⁵⁴

Some scholars narrated that al-Ḥassan and Ğābir ibn Zayd were asked about a man who said that all permissible things have become *ḥarām* for him. They said: “He needs to expiate for a broken oath.”²⁵⁵

Fatwa 106 reports of a man, who said to his wife: “I fear that you may have committed adultery.” According to Ğābir, those words that do not directly mean an accusation of adultery, are deemed an

²⁵⁰ ar-Rabī‘ year n/a: 54.

²⁵¹ Ibid.: 36-37.

²⁵² Ibid.: 45.

²⁵³ al-Ḥurāsānī 2006, Vol. 2: 68.

Ibid. 2006, Vol. 1: 265.

²⁵⁴ ad-Dāraqūṭnī 2004, Vol. 4: 41.

²⁵⁵ Ibn Abī Šayba 1989, Vol. 4: 97.

al-Ġašāš 1993, Vol. 5: 362; Vol. 3: 696.

Ibn Ḥazm 2010, Vol. 9: 304; Vol. 10, p. 126.

Ibn al-Qayyim 1991, Vol. 3: 59, 61.

aš-Šawkānī 1993, Vol. 7: 59; Vol. 6: 316.

expression of suspicion. The man should have avoided uttering such words.

A number of accounts attributed to Ğābir ibn Zayd tell us about similar situations. Ğābir's opinion in all of these situations is the same, even if he chose different terms to express it:

According to ar-Rabi' ibn Ḥabīb's *Ātār*, Ḍimām said that as soon as a man had arrived home, his young children surrounded him. [Annoyed by the children's behaviour,] the man said to his wife: "Take those bastards away!" Ğābir said: "Leave the veil put by Allāh untouched!"²⁵⁶

According to Muḥammad al-Kindī's *Bayān al-Šar'*: "A man went home carrying a number of watermelons that he bought for trade. As soon as his young children saw him, they surrounded him. The man said to his wife: 'Take those bastards away!' The wife exclaimed: 'Watch your words!' The man replied: 'You are not an adulteress!' The couple went to Ğābir ibn Zayd and asked him about that. Ğābir said: 'No harm done on the part of either of you!'"²⁵⁷

Aš-Šammāḥī also stated that a woman told Ḍimām that her husband said to her "Take those bastards away!" as he was talking about their own children. Ḍimām promised her that he would ask Ğābir about that. Later, Ḍimām asked Ğābir about the man's words. Ğābir replied: "No harm has been done. They should not have told anybody about the incident."²⁵⁸

Having sexual relations with two female slaves at the same time is discussed in **Fatwa 118**. The same issue was discussed in **Fatwa 21**. In both fatwas, Ğābir ibn Zayd believes that a man may have sexual intercourse with his wife or a female slave in a place where nobody can see them. If a man has two wives, he may not have sexual relations with them at the same time.

²⁵⁶ ar-Rabī year n/a: 37.

²⁵⁷ al-Kindī 1985b, Vol. 71: 99-100; Vol. 47-48: 555.

²⁵⁸ aš-Šammāḥī 1970, Vol. 1: 82; 84.

According to al-Buḥārī's *Tārīḥ al-kabīr*, Ḡābir ibn Zayd said: "A man is not allowed to have sexual relations with two female slaves at the same time."²⁵⁹

Matters related to Divorce

In Ḡābir's letters, there are four fatwas dealing with the subject of divorce. (see Appendix, **Table 11**, p. 191)

Fatwa 60 raises the question as to under which circumstances a new master may marry a female slave who was married to a male slave that was then separated from her. This fatwa was already dealt with under the topic of a master's authority over his slave and its limits (see page 96, also refer to fatwa 59). With regard to the topic of divorce, Ḡābir stated that the new master needs to look for the old master. Otherwise, he may not enter into relations with the female slave. Her first marriage remains valid and effective as it was legally conjoined.

In **Fatwa 94**, Ḡābir explains that *al-ḥul'* serves as an alternative separation procedure between couples. The husband does not have the right to force his (ex-)wife to re-marry him. Ḡābir believes that *al-ḥul'* is final and thus not like a divorce, because a revocably-divorced woman may be re-married by her husband. With *al-ḥul'*, a woman sacrifices a portion of her money/property in order to be released from the marriage bond.

Scholars dealt with that issue. Among the accounts citing Ḡābir's opinion in this respect, some are contradictory.

According to ar-Rabī' ibn Ḥabīb's *Āṭār*, Abū š-Ša'ṭā said: "*Al-ḥul'* is not divorce. If the husband proposes to re-marry the wife, then he will have three times of divorce at his proposal."²⁶⁰

²⁵⁹ al-Buḥārī 1960, Vol. 6: 48.

²⁶⁰ ar-Rabī' year n/a: 50.

This is one of the differences between *al-ḥul'* and divorce. *Al-ḥul'* may not be deemed a divorce. If the couple re-marries each other, the husband shall have three times of divorce at his proposal.

This is supported by another account attributed to Ḡābir ibn Zayd by Abū Ḡānim al-Ḥurāsānī in his *Mudawwana*, aš-Šammāḥī in his *Siyar*, and ad-Darḡīnī in his *Ṭabaqāt*: Ḡābir ibn Zayd reported that 'Abdallāh ibn 'Abbās believed that *al-ḥul'* is not divorce.²⁶¹

One of the Ibādī scholars who adopted an opposing opinion is Muḥammad ibn Baraka. According to his *Kitāb al-Ḡāmi'*, *al-ḥul'* gives the woman freedom as if it were a divorce. However, Ḡābir ibn Zayd believed that it is not so.²⁶²

Fatwa 95 deals with more than one issue, including: (1) A man married a virgin who is too young to menstruate. During her waiting period (*al-idda*), she menstruated for the first time in her life. (2) And what about a divorced woman who no longer menstruates, but happened to menstruate during her waiting period? (3) And what about divorced women, whose menstruation takes a longer time than usual during their waiting period? (4) And what about a divorced woman who does not menstruate during her waiting period?

Ḡābir begins his answer with a general remark, saying that according to 'Abdallāh ibn 'Abbās, God made menstruation a means by which one can tell whether a woman is pregnant or not. Her waiting period shall begin from the day on which she menstruated for the first time, as some young women conceive before menstruating for the first time.

Ḡābir's answer doesn't address the case of the divorced virgin (about a woman that was divorced before consummation) and points

²⁶¹ al-Ḥurāsānī 2006, Vol. 2: 55.
Ibid. 2006, Vol. 1: 238.
ad-Darḡīnī 1974, Vol. 2: 449-450.
aš-Šammāḥī 1987, Vol. 2: 92-93.
²⁶² Ibn Baraka 2007, Vol. 2: 196.
al-'Awtabī 1994, Vol. 10: 47.
al-Kindī 1985b, Vol. 38: 62.

the poser of the question to the Holy Qu'ran which appears to give an answer to the issue:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا ...²⁶³

With regard to the other questions, Ğābir ibn Zayd again refers to 'Abdallāh ibn 'Abbās' opinion in this respect: If the woman menstruates, then she is not pregnant. *al-'idda* was imposed so as to make sure that the divorced woman is not pregnant. According to Ğābir, both divorced women who menstruate, and divorced women whose menstruation exceeds its usual period, shall calculate their *al-'idda* using the times of menstruation.

In Ğābir ibn Zayd's opinion, what generally matters is making sure that the divorced woman is not pregnant. Therefore, he relies on the signs that reflect that the divorced woman is not pregnant. The aim here is to avoid conflicts of lineage, alimony, inheritance, etc., in case the divorced woman re-marries. Therefore, Ğābir draws the attention to the fact that sometimes pregnant women menstruate, and a woman who has never menstruated may become pregnant.

Fatwa 104 deals with a controversial matter about which scholars in Ğābir's era debated heavily, namely whether a divorce made by a dying person is effective or not. The decision about this issue affects the widow's *al-'idda* and share of her former husband's legacy. According to Ğābir, this divorce is deemed ineffective as long as the man is feared to die within a short period, and, as a result, she is entitled to her dowry and share of his legacy. On the other hand, 'Abdallāh ibn 'Abbās believed that such divorce is effective, and if she re-marries she will be entitled to neither her dowry nor a share of her former husband's legacy. Nonetheless, Ğābir believes that even if the woman re-marries, she will still be entitled to both her dowry and her share of her former husband's legacy.

²⁶³ Qur'ān (33:49).

It is well known that the Qur'ān stipulates that *al-'idda* is not applicable to any divorced woman if the marriage was never consummated (see Fatwa No. 95). Moreover, such a woman shall be entitled to only a half of her dowry.

وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ²⁶⁴.

In his *Muḡnī*, Ibn Qudāma mentioned another statement expressed by Ḡābir concerning a similar issue: If a dying man divorces his wife three times before consummation, Ḡābir's main answer is this one: "She shall be entitled to half of her dowry, but she shall not be entitled to a share of his legacy, and she need not observe *al-'idda*." A similar statement is also transmitted by Aḥmad: "Ḡābir ibn Zayd believes that she (the divorced wife) shall not be entitled to a share of his legacy, and she need not observe *al-'idda*." Opposing this view, Aḥ-Ḥassan said: "She shall be entitled to a share of his legacy."²⁶⁵

Matters Related to Abstinence

Two fatwas are related to a case in which the husband takes an oath not to have sexual intercourse with his wife, termed as *al-ilā'* (الإيلاء). The following paragraphs will discuss those matters. (see Appendix, **Table 12**, p. 191)

Fatwa 119 is the first one that deals with *al-ilā'*. According to Ḡābir ibn Zayd, *al-ilā'* is in principle not applicable in relationships with female slaves, but if a man takes an oath not to have sexual relations with his female slave and then he changes his mind, he still has to expiate for a broken oath.

Ḡābir ibn Zayd explains that *al-ilā'* is different from *aḏ-ḏihār* (divorcing one's wife by declaring her to be 'like my mother'). He

²⁶⁴ Qur'ān (2:237).

²⁶⁵ Ibn Qudāma 1997, Vol. 6: 269. Ibid., Vol. 7: 220.

believes that *az-zihār* applies to free women and female slaves alike, but *al-ilā'* applies only to free women.

Fatwa 120 deals with the same subject. A man vowed not to have sexual relations with his wife for a month, and a month elapsed. According to Ḡābir, that man needs to expiate by feeding ten poor people, because sexual abstinence is generally not intended in marriage.

Ḡābir adds that if a man vows not to have sexual relations with his wife for a month, and several months elapse and yet he fails to have sexual intercourse with her, then he needs to declare to his wife that he does not mean to practise *al-ilā'*. He needs to explain to her why he did not have sexual relations with her during the excessive period. If he fails to explain his reasons to her, then he needs to expiate for a broken oath.

Ḡābir quoted 'Ikrima's opinion: All periods of abstinence are treated the same in terms of the man's need to expiate for a broken oath.

In his *Mawsū'at āṭār al-Imām Ḡābir ibn Zayd*, Ibrāhīm Bu Larwah²⁶⁶ mentioned more of Ḡābir's pronouncements related to *al-ilā'*.

Matters Related to Temporary Abstinence

In Ḡābir ibn Zayd's letters we find two matters related to *al-idda* (waiting period), the following paragraphs will discuss those matters. (see Appendix, **Table 13**, p. 192)

Fatwa 50 deals with a case in which a woman who is still observing her *al-idda*, promises to marry a man after her *al-idda* expires. In Islamic terms, such an act is unacceptable. The Qur'ān stipulates that:

²⁶⁶ Bu Larwah 2006, Vol. 2: 152.

وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خِطْبَةِ النِّسَاءِ أَوْ أَكْتَنْتُمْ فِي أَنْفُسِكُمْ عَلِيمَ اللَّهِ أَنَّكُمْ
 سَتَذَكَّرُونََهُنَّ وَلَكِنْ لَا تُؤَاعِدُوهُنَّ سِرًّا إِلَّا أَنْ تَقُولُوا قَوْلًا مَعْرُوفًا وَلَا تَعْرَمُوا عُقْدَةَ النِّكَاحِ حَتَّى
 يَبْلُغَ الْكِتَابُ أَجَلَهُ.²⁶⁷

Therefore, Ğābir believes that that woman may not marry that man. If they get married to each other after *al-idda* expires, they must be separated from each other, and the man may not re-marry her.

Ğābir quotes ‘Abdallāh ibn ‘Abbās’ opinion, even though he himself is of a different opinion.

Fatwa 63 is similar to that of Fatwa 95, but in the case at hand it is about a girl who gets married before her first menstruation and divorced after consummation. The divorced girl menstruated only ten days before the three months waiting period expired: How should that divorced girl calculate her *al-idda*? According to Ğābir, her *al-idda* starts on the day she menstruated. She has to wait until she menstruates three additional times. The period preceding her first day of menstruation shall not be taken into consideration.

Ğābir ibn Zayd’s opinion in this matter is mentioned by Ibn Abī Šayba al-‘Absī in his *Muṣannaḡ*: Ğābir was asked about a case in which a man married a girl who had never menstruated. After consummation she was divorced. Two months and twenty five days later, she menstruated. Ğābir ibn Zayd replied: “She has to wait for three additional menstruations.” ‘Abdallāh ibn ‘Abbās adopted the same opinion.²⁶⁸

Matters Related to Compensated Divorce

Regarding the topic of compensated divorce (*al-ḡul’*), Ğābir discusses only one matter.

Fatwa 107 deals with a trick made by a wife to separate from her husband. According to Ğābir ibn Zayd, the trick resulted in a case

²⁶⁷ Qur’ān (2:235).

²⁶⁸ al-‘Absī 1989, Vol. 4: 80.

of real *al-ḥul'* (الخلع). Here we have a woman who several times has offered her husband to practise *al-ḥul'* but he kept refusing her offer. One day, she asked him to sell her a divorce for one thousand dirhams. Thinking that the result will be a revocable divorce from which he would gain a lot of money, the husband agreed.

According to Ḡābir ibn Zayd, the result was *al-ḥul'* rather than a revocable divorce.

In **Fatwa 94** Ḡābir ibn Zayd explains the difference between *al-ḥul'* and divorce, as was already discussed before (see page 109).

Matters Related to Lineage

In Ḡābir's letters, only one matter is related to lineage (*al-nasab*).

Fatwa 12: A man married a woman and she gave birth to more than one child. Later, he discovered that she is a female slave and that he was deceived.

This fatwa deals with deception and its consequences. The man was deceived by the family of the woman. What should he do after discovering the deception?

According to Ḡābir ibn Zayd, the children shall be treated as free people; the marriage is deemed terminated because of the deception; and the woman needs to repay the man her dowry.

A more detailed version of this fatwa can be found in Muḥammad al-Kindī's *Bayān al-Šar'*²⁶⁹ and it is also mentioned in *Manḥağ al-Ṭālibīn*.²⁷⁰

Matters Related to Nurturing aka Breastfeeding

On the subject nurturing (*ar-riḍā'*) there is one fatwa only.

²⁶⁹ al-Kindī 1985b, Vol. 47-48: 226.

²⁷⁰ aš-Šaqṣī 1978, Vol. 15: 232.

In **Fatwa 49**, Ğābir ibn Zayd deals with a case in which a man divorced his wife and they have a very young baby. To secure his baby's integrity, and out of fear that the ex-wife may become too busy to look after the baby if she re-marries, the ex-husband agreed to bear her expenditures for two years provided that she does not re-marry during such period.

According to Ğābir ibn Zayd, this condition is detestable, and if she accepts that condition but later she fails to satisfy it, she would not be deemed to have committed a sin. For example, she may re-marry and prematurely terminate the nurturing period of the baby. However, in this case she would not be eligible to receive the money agreed upon. Only the nurturing period that precedes her re-marriage shall be financially covered by the ex-husband. She has to refund the ex-husband any money she received after the date on which she re-married unless the ex-husband waives that right. On the other hand, it is good if the ex-wife waives her right to the money paid for nurturing.

5.4 Jurisprudence Relating to Transactions

As shown in **Table 14** (see Appendix, p. 192), thirty one jurisprudence matters fall under the jurisprudence of transactions representing 26% of Ğābir's fatwas. The following lines will analyze the content of the jurisprudence matters beginning with sales matters. (**Table 15**, p. 192)

Matters Related to Sales

According to **Fatwa 4**, Ğābir stated that a sale of a tree includes the sale of the piece of land underneath its roots because the tree cannot live without that piece of land. Therefore, the sale of such a piece of land is automatically included in the sale of the tree even if it is not explicitly expressed in the sale contract. This means that the seller's claim is fruitless.

Fatwa 5 deals with a sale conducted by an unauthorized agent, termed as *bay' al-fuḍūlī*. Ibādī scholars and other Islamic jurisprudence schools in general have two opinions regarding this kind of sale.

First: It is permissible, but it shall be effective only upon the owner's approval. Second: It is impermissible. Such sale is invalid.

Ĝābir ibn Zayd's fatwa, in which he quoted judge Hāšim's ruling, reflects the second opinion. He deems the sale invalid. The plot of land shall be returned to its owner. He added that if the true owner chooses to sell, the price of the plot of land shall be estimated. If its price is more than the price collected by the unauthorized agent, the agent shall make up the difference.

If the buyer has already cultivated that plot of land and spent money thereon, the land owner shall compensate him for the expenses he incurred and the work he has done.

Fatwa 7 deals with the purchase of Omani female slave. According to Ĝābir, such purchase is unlawful. Ĝābir's ruling means that even if those women are sold as female slaves, in fact they are free women and must be treated as such. Sale of a free person is unlawful. In **Fatwa No. 73** Ĝābir deems it *ḥarām*.

Fatwa 8 deals with a matter discussed earlier in fatwas related to the Islamic family law: Master's rights in terms of his slaves (see Fatwas No. 59 and 60). The master has a free hand over his slaves. He can have them married or divorced as he wishes. Likewise, he has a free hand over the money and property of his slaves.

In the fatwa this ruling is confirmed. A slave man may not enter in transactions without his master's permission, even if it involves the male slave's own belongings. Ĝābir stated that it is not permitted, and he dislikes anyone to buy from that male slave.

However, Ğābir ibn Zayd also strictly warns of injustice. If the buyer learns that a certain property has been unrightfully taken by the seller, (s)he may not purchase it.

Fatwa 15 deals with a case in which a person exchanges an item for a similar one. For example, people in different locations swap homes. According to Ğābir, this deal is permissible, and Muslims used to deal in such way, provided that the following three conditions are met:.

First: No margin is paid. In other words, no party may ask for an additional sum of money, of plot, etc. Second: Sale and taking possession of the object of the sale happen at the same session (as prices vary with the passage of time). Third: The deal is free from suspicion and doubts. In other words, no party is fooled or taken advantage of.

This matter falls in the category of sale and purchase of items of the same type. According to ar-Rabī' ibn Ḥabīb's *Musnad*, Ğābir ibn Zayd reported from 'Abdallāh ibn 'Abbās, that the Prophet said: "If the objects of sale and purchase are of different types, sell as you wish, provided that you avoid the *ḥarām* transactions I warned you of." The Prophet is reported to have bought a camel for two camels; he deemed it valid to sell a male slave for two male slaves provided that the sale and taking possession happen at the same session.²⁷¹

The text of **Fatwa 20** is unclear. It seems that the fatwa deals with the sale of sheep on credit. A man purchases one hundred sheep selecting them from a larger flock. Later, he comes back to take possession of the sheep he purchased. Or he pays the price on credit. According to this fatwa, this deal is unobjectionable.

In **Fatwa 33** Ğābir ibn Zayd deals with a case in which a man borrowed some cloaks from another man and later gave him back two

²⁷¹ ar-Rabī' 2011: 149.

garments instead of the cloaks he borrowed. Ğābir believes that that act is unlawful. The borrower needs to give back cloaks rather than garments. The opinion adopted by the Ibādī school is given in *Manhağ al-Ṭālibīn*: “According to Ibādī scholars, the borrower needs to give back items of the same type of the item (s)he borrowed.”²⁷²

Aṭfayyiš’s *Šarḥ al-Nīl* stated in this matter: “According to the prevailing opinion in our school, the borrower needs to give back items of the same type of the item (s)he borrowed.”²⁷³

Fatwa 34 deals with the sale of grain on credit in exchange for a different type of grain. According to Ğābir, this is unlawful. This fatwa seemingly contradicts with Fatwa No. 15. However, the difference lies in the grains which are used for food, and each kind is of a different type. Grains are covered by a specific ruling.

Fatwa 45 reports of a man that lent another man some wheat. When the payment was due, he received some food for the remainder of the debt. As stated in Fatwa 33, Ğābir believes that a loan must be paid off in kind (or the same amount if the loan is in cash). He asserts that in this case and quotes ‘Abdallāh ibn ‘Abbās so as to support his opinion. According to Ğābir, if a man lends some money to another man, he may, at the time of repayment, waive some of the loan amount. However, if the loan is a quantity of grain according to Ğābir the repayment may not be a mixing of kind and cash.

Fatwa 67 deals with a treasurer who gave a man money from the State’s Treasury. Later, he decided to turn that into a loan. Is that permissible? According to Ğābir, it is not, because with the passage of time that transaction will be a form of *ar-ribā* (interest).

²⁷² aš -Šaqṣī 1978: 128.

²⁷³ Aṭfayyiš 1986: 245.

The text of **Fatwa 72** can be interpreted to mean that it deals with the exchange of dirhams. It shares similarities with **Fatwa 34**. Ğābir believes that exchange shall be final and done on the spot. According to many of Ğābir's directives, any transaction in which exchange of dirhams, gold, or silver is involved must be immediate and on the spot.

According to ar-Rabī' ibn Ḥabīb's *Ĝāmi'*, Ğābir ibn Zayd from 'Abdallāh ibn 'Abbās said that the Messenger of Allāh, said: "Gold is to be paid for by gold, silver by silver, wheat by wheat, barley by barley, and salt by salt, payment being made hand to hand."²⁷⁴

Another report from Ğābir ibn Zayd from Abū Sa'īd al-Ḥudrī that the Messenger of Allāh said: "Don't sell gold for gold unless equal in weight, nor silver for silver unless equal in weight, nor barley for barley unless equal in weight. Do not sell any of them for the same type on credit."²⁷⁵

"I came to know that Ṭalḥa ibn 'Ubayd Allāh asked a man for an exchange deal involving gold. Ṭalḥa took the gold from the man and began to look at it, and said, 'Please, wait until my treasurer comes back from the forest.' 'Umar ibn al-Ḥattāb, who was present at that moment, exclaimed: 'By Allāh, I will not depart until your deal is completed!'" - "I heard the Messenger of Allāh saying: '(Exchanging) gold for silver is *ar-ribā* unless it is done on the spot. (Exchanging) wheat for wheat is *ar-ribā* unless it is done on the spot. (Exchanging) dates for dates is *ar-ribā* unless it is done on the spot. (Exchanging) barley is *ar-ribā* unless it is done on the spot."²⁷⁶

According to aṭ-Ṭabarānī's *Mu'ğam al-awsaṭ*, Ğābir ibn Zayd transmitted from 'Amr ibn Dīnār, who quoted 'Abdallāh ibn 'Abbās that Usāma ibn Zayd said: "I asked the Messenger of Allāh about exchanging gold for gold [both Usāma ibn Zayd and Zayd ibn 'Arqam

²⁷⁴ ar-Rabī' 2011: 150.

²⁷⁵ Ibid.: 150.

²⁷⁶ Ibid.: 150.

were engaged in gold business]. He said: ‘It is unobjectionable, provided that the transaction is made hand to hand.’”²⁷⁷

Fatwa 81 deals with the quality of the objects of in-kind loans. If a man borrows a quantity of barley, wheat or dates etc. he needs to pay off the loan using items of the same quality. In one case the borrower brought items of a higher quality to pay for his loan. The person posing the question feared that that would be a form of *ar-ribā*. Ḡābir told him that it is not as he did not make a condition that the loan should be paid off using items of a higher quality (see also fatwas 83 and 84).

Fatwa 82 deals with a sale that precedes taking possession of the object of sale. This is unlawful. A range of statements attributed to Ḡābir ibn Zayd support that opinion.

In his *Mudawwana*, Abū Ḡānim al-Ḥurāsānī wrote: “I asked Abū l-Mu’arrīḡ: ‘If a man bought some food, but has not taken possession of it yet: May he sell it?’ He replied: ‘No, he may not. I have an account attributed to ‘Abdallāh ibn ‘Abbās in this regard.’ I said: ‘Tell me of that story, please.’ He said: ‘Abū ‘Ubayda said that Ḡābir ibn Zayd told him that ‘Abdallāh ibn ‘Abbās had said: ‘A person may sell the food that he bought only after he takes possession thereof. In my opinion all other items shall be treated the same.’”²⁷⁸

According to *al-Mudawwana*, Ḡābir ibn Zayd transmitted from ‘Abdallāh ibn ‘Abbās that the Prophet “ordered us [i.e. the companions] not to sell the food we bought unless we had taken possession thereof, or it is weighed.”²⁷⁹

Fatwa 83 attends to a matter related to both the Islamic family law and jurisprudence of sales. It can be outlined as follows:

²⁷⁷ aṭ -Ṭabarānī 1994: 269.

²⁷⁸ al-Ḥurāsānī 2006: 128.

²⁷⁹ Ibid.: 130

A man had sexual relations with his female slave and she became pregnant. Later, she suffered a miscarriage. According to Ğābir, both birth and miscarriage are treated the same in terms of rendering her an unsaleable female slave termed as *umm al-walad*. This opinion is attributed to ‘Umar ibn al-Ḥaṭṭāb: “How dare you sell those women after you have had flesh and blood relations with them?”

However, the master may have sexual relations with her, use her, and own her earnings etc.

Ğābir ibn Zayd is not very sure that the slave woman in question has become an *umm al-walad*. Therefore, he said that selling her is repugnant rather than *ḥarām*.

Fatwa 92 discusses whether the purchase of camels can be paid in sheep. In Fatwa 15, Ğābir already dealt in part with this matter. The ruling is attributed to the Prophet. In his *Musnad*, ar-Rabī‘ ibn Ḥabīb reported from Ğābir ibn Zayd from ‘Abdallāh ibn ‘Abbās that the Prophet said: “If the objects of sale and purchase are of different kinds, sell as you wish, provided that you avoid the *ḥarām* transactions I warned you of.” The Prophet is reported to have bought a camel for two camels; deemed it valid to sell a male slave for two male slaves, provided that sale and taking possession happen at the same session.²⁸⁰

Matters Related to Tenancy

In Ğābir ibn Zayd’s letters, there is only one matter related to tenancy (*al-’ijār*).

Fatwa 1 deals with correct wages. There was a waterway owner who hired a worker. Having finished part of the task assigned to him, the worker fled. The owner had to hire a number of workers at a much higher remuneration. Having heard that the task was done, the first

²⁸⁰ ar-Rabī‘ 2011: 149.

worker came back and claimed that he did not run away and that he had gone home seeking help to finish the task assigned to him. Now the worker claims his wage.

According to Ğābir ibn Zayd, that worker is entitled to a wage that covers the part of the task he completed; the other workers are entitled to a wage that covers the part of the task they had done. No party may be treated unjustly. This is based on the principle: “There should be neither harm nor malice.”²⁸¹ (see **Table 16**, p. 193)

Matters Related to Crop Sharing

Seven Fatwas deal with the sharing of crops (*al-muzāra‘a*).

Fatwa 2 pertains to the wages of a person who practises *muzāra‘a*. That matter is also dealt with in Fatwas No. 64 and 65. According to Ğābir, the wage must be defined and specified, and may not be based on unknown items. This fatwa confirms that same principle. He believes that the landlord needs to pay the tenant the wage agreed upon and not treat him unjustly.

Fatwa 3 complements the preceding one. This time the wage of the worker is not fixed. Agreeing on making the wage contingent on the resulting proceeds of a number of palm trees means that the wage is not fixed. Ğābir believes that this is unlawful and that the wage must be defined and specified.

Fatwas 64 and 65 report that a man was engaged to cultivate a piece of land with palm tress. In return for his labor he was to be paid a portion of the resulting proceeds. But his wages were not precisely specified. Both fatwas deal with renting a plot of land for cultivation. Here the landlord offers the worker a certain percentage of the result-

²⁸¹ Ibn aṣ-Ṣalāḥ said: “This so-called *Hadīth* is frequently quoted by many jurists and *Hadīth* scholars. It is not authentic.” This means that these words were not said by the Prophet. Nevertheless, their meaning is true. No scholar will debate that it represents an established and valid principle in *ṣarī‘a*.

ing proceeds. According to Ğābir ibn Zayd, this is unlawful as the wage is not defined and specified.

Many accounts attributed to Ğābir ibn Zayd that refer to *al-muzāra‘a* comment on deals with an undefined wage, including:

According to ar-Rabī‘ ibn Ḥabīb’s *Musnad*, Abū š-Ša‘tā was one day asked if practising *al-muzāra‘a* for a half, a third or a fourth of the proceeds is permissible. He replied: “No, it is not!”²⁸²

Ar-Rabī‘ ibn Ḥabīb also reported that Ğābir ibn Zayd deems it impermissible to practise *al-muzāra‘a* for a share in the resulting proceeds.²⁸³

Moreover, ar-Rabī‘ ibn Ḥabīb stated that Ğābir ibn Zayd deems it impermissible to practise *al-muzāra‘a* for a half of the resulting proceeds plus a sum of money.²⁸⁴

Furthermore, ar-Rabī‘ ibn Ḥabīb in his *Ātār* reported that Ğābir ibn Zayd deems it impermissible to practise *al-muzāra‘a* for a half of the resulting proceeds, provided that the seeds and sowing are borne by the worker.²⁸⁵

The above-mentioned accounts confirm Ğābir ibn Zayd’s opinion given in his letters.

Fatwa 66 deals with aspects related to the relationship between partners. Both partners should be amenable to each other. That’s why Ğābir ibn Zayd deems the transaction between the two parties valid as long as it doesn’t involve fraud.

Fatwa 88 settles a case of *al-muzāra‘a* with no terms or wage clauses between the parties. They have confidence in each other and are accomodating towards each other. Ğābir approves their transaction and deems it unobjectionable.

²⁸² ar-Rabī‘ 2011: 72.

²⁸³ Ibid.: 74-75.

²⁸⁴ Ibid.: 75.

²⁸⁵ Ibid.: 75.

Fatwa 113 deals with practising *al-muzāraʿa* with non-Muslims. According to Ğābir ibn Zayd, this is unlawful. His opinion may be based on the fact that the religious rules that govern non-Muslims' transactions and crops are different from those of Muslims. This may lead to overwhelming complications if a partnership is made between a Muslim and a non-Muslim. This meaning is asserted by his words "because they treat the impermissible in Islam as permissible."

In case of such partnership, a conflict may arise from practicing usury on the part of the non-Muslim partner. Likewise, a conflict may arise if the non-Muslim partner desires to grow grapes with the intention to sell them to wine makers. (Table 17, page 194)

Matters Related to Taxation

Ğābir ibn Zayd's letters deal with two matters related to the topic of taxes (*al-ḥarāğ*).

Fatwa 78 contains a piece of advice given to a governor regarding *al-ḥarāğ* and financial corruption. This is one of the most important fatwas included in Ğābir ibn Zayd's letters. In this fatwa he offers solutions to administrative and financial corruption. It reflects the fact that Ğābir closely monitored financial matters in the Muslim State in the Umayyad era.

According to Ğābir, financial corruption stems from the ruler's failure to know the details of the transactions made behind his back. Cases of corruption indicate grave shortcomings in the governor's relationship with his subordinates.

Ğābir believes that the governor needs to benefit from farmers working on state-owned lands. Therefore, he needs to hold a meeting with them and let each one of them tell him about his (the farmer's) capacity and abilities. In the light of that information the governor can assign each one of them a task that suits him best.

Ĝābir maintains that a ruler needs to know the abilities and competences of his subordinates, and he may know this through face-to-face meetings.

Ĝābir also pinpoints the defect: Big businessmen in that era controlled the land crops and agreed with the State to collect the crops. They collected them and made a great deal of money. However, they deposited very little in the State's Treasury, alleging that they made very little or no profits. Therefore, Ĝābir suggests that the governor makes deals directly with the farmers and use no agents, and that such deals shall be in writing.

It is worth mentioning that Ĝābir is keen on increasing the revenues that reach the State's Treasury, even if he knows that the Umawiyūn control the State's Treasury. This reflects his general attitude in separating state and religion.

Fatwa 79 declares that no additional *al-ḥarāĝ* may be collected from non-Muslims. According to Ĝābir ibn Zayd, non-Muslims living in the Islamic countries are to pay nothing other than *al-ĝizya*. (**Table 18**, p. 194)

Matters Related to the Release from Slavery

In Ĝābir ibn Zayd's letters there are two matters related to the terms under which slaves are freed (*al-mukātaba*). (see Appendix, **Table 19**, p. 195)

Fatwa 110 brings up the case of a female slave who entered into a *mukātaba* agreement claiming that she had no money. Later, it was discovered that she had not told the truth.

This fatwa may be summarized as follows: If a female slave enters into a *mukātaba* agreement claiming that she has no money, and it later turns out that she had lied about that, such money shall be her master's. If the master failed to investigate her claim at the time of the *mukātaba* agreement, then that money will be hers.

There is a discrepancy regarding her children. Ğābir ibn Zayd states that ‘Abdallāh ibn ‘Abbās believes that at the time of the *mukātaba* agreement, her children automatically will be included in that deal. However, he also cites ‘Ikrima who believes that the woman’s children will not be included in that deal. Ğābir encourages the female slave to declare her assets as well as the number of her children, when she expresses her desire to enter into a *mukātaba* agreement.

Fatwa 111 deals with issues related to *al-mukātaba*, namely a male slave’s satisfactory fulfilling of his contractual conditions.

Ğābir is asked about a male slave who entered into a *mukātaba* agreement but failed to pay his master from the money agreed upon. However, that slave is known to be an honest, hardworking person. Ğābir believes that the slave should be treated as a debtor in spite of the fact that the people of Medina have customarily treated such persons as a debtor only in the case where he pays part of the amount of money agreed upon.

Matters Related to Profit Partnership

Only one matter deals with the conditions of a profit partnership, which involves one partner contributing money, the other one labor (*al-muḍāraba*). It is found in **Fatwa 112**. *Al-muḍāraba* is originally free of conditions. This is stated by Ğābir ibn Zayd, and he attributes it to ‘Abdallāh ibn ‘Abbās. However, he approves general conditions such as not taking risks (including travelling while carrying the money or dealing with it in far away places). In matters related to the *muḍāraba* business itself, especially in minute details thereof, conditions are unacceptable.

This opinion is attributed to Ğābir ibn Zayd by ‘Abd al-Azīz aṭ-Ṭumaynī in his *Tāğ*: If a man entrusts his money to be invested in *al-muḍāraba* to another man and tells him not to go out to sea, but the merchant nevertheless does go out to sea, the merchant shall

compensate his investor for the money, and give him the resulting profit as well.²⁸⁶

Matters Related to Debts

There is one mention of how to deal with debt in the letters. According to **Fatwa 19**, debts (*ad-dayn*) may be paid off entirely in kind (goods) or partly in cash and partly in kind (goods).

Al-‘Awtabī in his book *ad-diya* attributes that opinion to Ğābir: “Ğābir ibn Zayd was asked about a case in which a man sold some food on credit: May the price of such food be paid off using the same kind of food or a different one? Ğābir replied: ‘Yes, it may (both options are lawful).’”²⁸⁷

In his commentary on Abū Dāwūd’s *Sunan*, Ibn al-Qayyim mentioned Ğābir ibn Zayd’s opinion in a case in which the sold item is one of the items that are subject to *ar-ribā* (interest resp. the prohibition thereof): A man buys some wheat on credit. When the payment was due, the buyer used his money to buy some wheat or a different kind of food so as to pay off his debt. Is that permissible? Scholars have different opinions about that. Some scholars deem it unlawful. Other scholars, including Ğābir ibn Zayd, deem it permissible.²⁸⁸

5.5 Jurisprudence Relating to Criminal Law

In Ğābir ibn Zayd’s letters we find four matters related to criminal law (*al-‘uqubāt*). (see Appendix **Table 22** p. 196)

According to **Fatwa 56**, if a person who is married commits adultery (s)he shall be stoned.

According to the early Ibādī sources, stoning is acknowledged as a punishment. The following texts reflect this:

²⁸⁶ Aṭfayyīš 1986, Vol. 10: 337.

²⁸⁷ al-‘Awtabī 1994, Vol. 11: 240.

²⁸⁸ Amīr 1985, Vol. 9: 262.

Abū Ġānim al-Ḥurāsānī asked Abū l-Mu'arriğ about the issue: “When does stoning apply?” Abū al-Mu'arriğ replied: “Abū 'Ubayda told me that Ġābir ibn Zayd said: ‘If the adultery act is proved to have happened.’” In another version, Ġābir added “Otherwise, if the offender admits that (s)he has committed adultery (s)he shall be stoned.”

Abū Ġānim said: “I asked Abū l-Mu'arriğ, and I was told by someone who asked ar-Rabī' ibn Ḥabīb about a case of a boy and a girl, who were both married, who had not yet reached adulthood, and committed adultery with each other. Both Abū l-Mu'arriğ and ar-Rabī' ibn Ḥabīb replied: ‘If boys and girls of their age are actually adults, then such boys and girls shall be stoned.’” Ibn 'Abd al-Azīz added: “They may only be stoned if they are adults.”

I asked Abū l-Mu'arriğ about a Muslim man who has committed adultery with a Christian woman. He replied: ‘If that man is married, then he shall be stoned. The Christian woman shall be returned to her people who shall decide on her matter in accordance with their own rules. Muslims may not decide on her matter in accordance with Islamic rules.’

Abū l-Mu'arriğ added: “Maḥbūb told me from ar-Rabī', and ar-Rabī' from Abū Ġassān that he asked Abu Ayyub about a man who was married and committed adultery. Four men gave witness that he did commit adultery. Therefore, the judge sentenced him to death. After the man had been stoned to death, one of the witnesses claimed that he gave a false testimony and now he wants to repent.” Ar-Rabī' ibn Ḥabīb reported that Abū 'Ubayda's opinion in this case is to sentence the offending witness to death because a man was put to death due to his false testimony. The same opinion is adopted by Abū l-Mu'arriğ.

I asked them about a man who is married to a Jewish, Christian, or slave woman and then commits adultery: Shall he be stoned? Abū l-Mu'arriğ ‘Abū 'Ubayda told me that Ġābir ibn Zayd's opinion is that such a man shall be stoned.’

I said to Abū l-Mu'arriḡ: 'What kind of whips should be used for flogging the person who committed fornication?' He replied: 'Abū 'Ubayda told me that Ġābir ibn Zayd told him from 'Abdallāh ibn 'Abbās that a man came to the Prophet and admitted that he had fornicated. The man had never married before. The Prophet asked for a whip.'

I said to 'Abdallāh ibn 'Abd al-'Azīz: 'So, what about the following Quranic verse:

وَاللَّاتِي يَأْتِيَنَّ الْفَاحِشَةَ مِنْ نِسَائِكُمْ فَاسْتَشْهِدُوا عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا * وَاللَّذَانِ يَأْتِيَانِيهَا مِنْكُمْ فَأَدُوهُمَا فَإِنْ تَابَا وَأَصْلَحَا فَأَعْرَضُوا عَنْهُمَا إِنَّ اللَّهَ كَانَ تَوَّابًا رَحِيمًا²⁸⁹

He replied: 'That was the very first form of punishment. However, that was abrogated by the verses of Sūrat an-Nūr:

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ²⁹⁰...
Ibn 'Abd al-'Azīz said: 'Therefore, if a person who is married commits adultery, (s)he shall be stoned, and if a person who has never married fornicates, (s)he shall be flogged one hundred lashes.'²⁹¹

Fatwa 51 deals with a case of *ad-diya* (blood money/compensation) in which a man was beaten and badly wounded. Later, he was given blood money for the offence. After that, his health deteriorated and the wound was opened again. Eventually, the victim died. Shall the offender pay a full *ad-diya*?

Ġābir ibn Zayd believes that the offender needs to pay a full *ad-diya*. He quoted 'Umar ibn al-Ḥaṭṭāb's ruling in a similar case in which no later than two years after the incident the victim died because of the injury.

Fatwa 61 mentions an incident, in which an animal hurt a person, while its owner was riding it. This fatwa deals with offences

²⁸⁹ Qur'ān (4:15-16).

²⁹⁰ Qur'ān (24:2).

²⁹¹ Abū Ġānim al-Ḥurāsānī 2006: 126.

made by animals and the responsibility of their owners towards the victims. Scholars debated heavily over this issue. According to Ğābir, the offending animal's owner has to pay the blood money *ad-diya*.

According to ar-Rabī' ibn Ḥabīb's *Musnad*, Ğābir ibn Zayd from Abū Sa'īd al-Ḥudrī reported that the Messenger of Allāh said: "There is no *diya* for persons killed by animals or for the one who has been killed accidentally by falling into a well or for the one killed in a mine. And one-fifth of *ar-rikāz* (treasures hidden before the Islamic era) is to be given to the State."²⁹² This means that offences committed by animals are punishable only if their owners: (i) deliberately harmed the victim through the actions of their animals, or (ii) failed to tame them in a proper way.

Fatwa 93 discusses blood money *ad-diya* in case of an accidental homicide and of an offender seeking forgiveness from the victim's family. It is related to the subject of fatwa 51. It seems that the offender is a wealthy man in this town. He beat a man and the man died because of that. Therefore, the offender wanted to pay the *ad-diya*. However, the sons of the victim waived the payment. Nevertheless, the offender insisted on paying it, and he paid them forty young camels (an adequate quantity). According to Ğābir, if the offender is sure that the sons of the victim waived the rest of the *ad-diya* out of their own free will and not under compulsion, or fear that the offender may inflict harm on them, then he may accept such waiver. Otherwise, he needs to pay them the full *ad-diya*.

5.6 Jurisprudence Relating to Inheritance

In Ğābir ibn Zayd's letters there are two matters related to jurisprudence of inheritance. (see Appendix, **Table 23**, p. 196)

²⁹² ar-Rabī' 2011, Vol. 1: 85; Vol. 2: 155.

According to **Fatwa 18**, Ğābir stated that if a slave mother had been freed before the legacy of her deceased son was distributed, she is eligible to inherit it. She would inherit his entire legacy if there are no other inheritors who have prevalence over it. However, if there are other inheritors and his mother is in a position to receive a share in his legacy, she will inherit a share therein.

‘Abd ar-Razzāq in his *Muṣannaḡ* provides a similar fatwa attributed to Ğābir ibn Zayd. Abū š-Ša‘tā said: “If a man dies leaving nobody but a son, and that son, who used to be a slave, is freed before the legacy is distributed, then that son shall be eligible to inherit from his father.”²⁹³

According to Sa‘īd ibn Maṣṣūr, Abū š-Ša‘tā said: “If a man dies leaving nobody but a slave son, and that son is freed before the legacy is distributed, then that son shall be eligible to inherit from his father.”²⁹⁴

Fatwa 109 discusses how to deal with the legacy of deceased slaves. Ğābir gives the example of ‘Abdallāh ibn ‘Umar, who, after one of his slaves died used the inheritance from the slave to free one other slave, and gave the rest to charity. Another example Ğābir gives is from ‘Abdallāh ibn ‘Abbās, who says that the legacy of a deceased slave belongs to his master if there are no other claims.

5.7 Jurisprudence Relating to Diverse Matters

Among the jurisprudence relating to diverse matters, three fatwas deal with gifts (*al-hadiya*) and four with ethical behaviour (see Appendix **Table 20 and 21** p. 195)

Fatwa 68 speaks of a public official who is well treated by merchants out of fear of his authority. This fatwa regulates the giving

²⁹³ ‘Abd ar-Razzāq 1983, Vol. 10: 350.

²⁹⁴ Ibn Maṣṣūr 1982, Vol. 1: 76, 96.

and taking of inducements between authorities, public officials and merchants. Ğābir ibn Zayd believes that if merchants attempt to induce out of fear of the public official's authority, that is impermissible. Giving food to the public official's riding animal in order to gain his favor is impermissible as well.

Fatwa 87 raises the question as to whether a public official is allowed to accept gifts that might yield benefits to the givers. Ğābir believes that such gifts may not be accepted as it is against the ethics of his job. Nonetheless, if the public official previously did them a favour without violating his occupational integrity, then he may accept such gifts.

The text fragments of **Fatwa 98** that can be deciphered deal with the gifts one gives to one's children, spouse, and other relatives. According to this fatwa, Ğābir believes that if a person claims that a deceased person had given him/her something as a gift, such claim shall be taken into consideration only if the same was defined in writing.

In **Fatwa 6**, focusing on masturbation, Ğābir's answer is vague. However, other statements attributed to Ğābir appear to reveal his opinion, including:

According to 'Abd ar-Razzāq's *Muṣannaf*, Ğābir ibn Zayd said: "It [i.e., semen] is yours. You may ejaculate it."²⁹⁵

According to other sources, 'Abdallāh ibn 'Abbās was asked about masturbation for men and women. He replied: "It is preferable to fornication." The same opinion is held by Abū š-Ša'tā, Muğāhid, and al-Ḥassan.²⁹⁶

²⁹⁵ 'Abd ar-Razzāq 1983, Vol. 7: 391.

Ibn Ḥazm 2010, Vol. 11: 393, 409.

²⁹⁶ al-'Abdarī 1994, Vol. 8: 392.

Accordingly, both Ġābir ibn Zayd and ‘Abdallāh ibn ‘Abbās believe that masturbation is permissible.

Fatwa 10 discusses female circumcision. According to Ġābir, it is not obligatory. There are several pronouncements attributed to Ġābir ibn Zayd in this respect, including these:

In al-Bayhaqī’s *Sunan al-kubrā*, Ġābir ibn Zayd declared that ‘Abdallāh ibn ‘Abbās said: “Circumcision is sunna (i.e. obligatory) for males, and a sign of honour and dignity for females.”²⁹⁷

A similar Hadith was recorded by aṭ-Ṭabarānī in his *Mu‘ğam al-kabīr*.²⁹⁸

In **Fatwa 48**, Ġābir rules that the same etiquette is required, whether someone wants to enter a pavilion, a tent, or a house. Tents and pavilions are considered as houses. In this instance Ġābir ibn Zayd uses *al-qiyās* [analogy] referring to Quranic verses that mention “houses”:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْنِسُوا وَتُسَلِّمُوا عَلَى أَهْلِهَا ...²⁹⁹
فَإِذَا دَخَلْتُمْ بُيُوتًا فَسَلِّمُوا عَلَى أَنْفُسِكُمْ تَحِيَّةً مِنْ عِنْدِ اللَّهِ مُبَارَكَةٌ طَيِّبَةٌ ...³⁰⁰

Fatwa 86 explains how to seek God’s protection from the evil eye. Ġābir stated that if any evil is inflicted on someone because of the evil eye, he needs to seek recourse. While the phenomenon has its roots in preislamic times, early Islam provides new remedy procedures. In his fatwas Ġābir doesn’t give any details on the cure, but he ascertains the person posing the question that the evil eye does occur and needs to be treated. Several accounts attributed to Ġābir ibn Zayd deal with this issue.

²⁹⁷ al-Bayhaqī 2004, Vol. 8: 325.

²⁹⁸ aṭ-Ṭabarānī 1999, Vol. 12: 182.

²⁹⁹ Qur’ān (24:27).

³⁰⁰ Qur’ān (24:61).

In his *Musnad* Aḥmad Ibn Ḥanbal had it from Ğābir ibn Zayd, who had it from ‘Abdallāh ibn ‘Abbās that the Prophet said: “The evil eye is real. It makes birds flying high in the sky fall.”³⁰¹

In his *Ta’ḡīl al-manfa’a*, Ibn Ḥaḡar from Ğābir ibn Zayd from ‘Abdallāh ibn ‘Abbāsa that the Prophet said, “The evil eye is real.”³⁰²

In his *Mustadrak ‘alā al-ṣaḡḡḡayn*, al-Ḥākim transmitted from Ğābir ibn Zayd from ‘Abdallāh ibn ‘Abbās that the Messenger of Allāh said: “The evil eye is real. It makes birds flying high in the sky fall.”³⁰³

In his *Mu’ḡam al-kabīr*, aṭ-Ṭabarānī transmitted from Ğābir ibn Zayd from ‘Abdallāh ibn ‘Abbās that the Messenger of Allāh said, “The evil eye is real. The evil eye is real. It makes birds flying high in the sky fall.”³⁰⁴

In his *Tarīḡ al-kabīr*, al-Buḡārī transmitted from Ğābir ibn Zayd from ‘Abdallāh ibn ‘Abbās that the Prophet said: “The evil eye is real. The evil eye is real.” Wakī’ commented: “It may make a camel fall down.”³⁰⁵

The above-mentioned statements attributed to Ğābir ibn Zayd indicate that he had no doubts about the reality of the evil eye.

³⁰¹ Ibn Ḥanbal 1994, Vol. 1: 274.

³⁰² Ibn Ḥaḡar 1996, Vol. 2: 602.

³⁰³ al-Ḥākim 1999, Vol. 4: 239.

³⁰⁴ aṭ-Ṭabarānī 1999, Vol. 12: 184.

³⁰⁵ al-Buḡārī 1960, Vol. 3: 251.

al-Ḥussaynī 1989: 591.

The 18 Letters in Arabic

Text

{1}	Numbers given to each letter for the purpose of the study.
[1]	Numbers given to each fatwa for the purpose of the study.

Sigla

/	End of a page or folio in the manuscripts; the page or folio numbers of Tunisian copy (T) are shown on the right margin next to /, while the numbers of Algerian copy (S1) are shown on the left.
S1: 62	Algerian copy folio 62.
T: 70 R	Tunisian copy folio 70 on the right.
[لا]	Conjectural addition.
T: 80 L	Tunisian copy folio 80 on the left.
†عد...فك†	Uncertain reading.
--	It seems that one word or more words are missing here, it could be mentioned on another manuscript or not.
()	Quranic quotation

Footnotes

T	Tunisian manuscript found in <i>al-Maktaba al- Bārūnīya</i> in Djerba.
S1	Algerian manuscript found in the library of Sheikh Ṣāliḥ ibn ‘Umar in Wadi Mzāb .
- S1	not in S1
S1+ على	S1 additionally has على
- ... - S1	blank in the manuscript
/ T ، S1 نزوله / ترو له	Uncertain reading in both T and S1.
Q:3:106	quotation from the Qur’ān, Sūra number 3, verse 106

Arabic Text

بسم الله الرحمن الرحيم، وصلى الله على نبينا محمد وعلى آله
وصحبه³⁰⁶

{1}

من جابر بن زيد إلى راشد بن خيثم، سلام عليك، فإني أحمد الله إليك الذي لا إله
إلا هو، وأوصيك بتقوى الله، والحفظ لما استحفظك الله، وأد الأمانة فيما ائتمنتك
الله عليه، إنك تحمل الله ما لم تطق سماء ولا أرض ولا جبل شفقة من أن تضيع
من ذلك شيئاً، فيعذبها الله بما هو أشد خلقاً.

واعلم أن الأمانة التي عرض عليهن دينه وشرائعه وفرائضه في الأسماع
والأبصار والأفئدة والألسنة والجوارح والصلاة والزكاة والطهور والركوع
والسجود والصلة والجوارح، وما سوى ذلك مما أمر به ونهى عنه المؤمنين،
³⁰⁷مستحفظين عليه، وأورثه ورثة بعضهم من بعض، الآخر تابع فيه الأول،
مع علم وشهود لا يسقطون شيئاً ولا ينسونه. ولا تكن ملبوساً عليك، ولا تأخذ
بعرض من الدين، ولا تتمن أمنية المفرطين.

واعلم أن أهل الدنيا نزلوا من الله بأحد منزلتين في الدنيا، وعلى ذلك يوم
القيامة: إما كرامة لا كرامة بعدها أفضل منها، وإما هوان لا هوان بعده أشد
منه. والمقبوح من قصرت به نيته دون المؤمنين، والهالك المرتاب المتربص
المفتون من خالف مغيبه مشهوده، ومن لم يبلغ علمه منطلق لسانه.

فإذا جاءك كتابي فأدرك أمرك، وأحيي ما مات منه قبل ذلك، فنسأل الله ونلجأ
إليه في المسألة، ونترجى منه بما دل على نفسه أن يبارك لنا ولك / في الذي
وهب لنا من التبصرة، وأن يعيننا على الذي لا نطيقه إلا³⁰⁸، ولا نبلغه إلا
بمواهبه.

S1: 62

بسم الله الرحمن الرحيم وصلى الله على سيدنا محمد وعلى آله وصحبه وسلم هذه جوابات أبي الشعثاء + S1³⁰⁶
جابر بن زيد إمام المذهب رحمه الله ورضي عنه

المفروطين S1³⁰⁷

على ربنا رب محمد S1، T³⁰⁸

أما بعد، فإننا نخبرك من خبرنا أنا بخير من الله، فضله عظيم، ونعمته سابعة، وعادته إلينا حسنة في الذي سلف، لا نعيب عليه شيئاً من أمرنا، العيب علينا [لا] على ربنا رب محمد³⁰⁹.

وقد أتاني كتابك تذكر فيه دفاع الله عنك، وعافيته إياك في الذي ابتلاك، فنحمد الله على ذلك، ونسأله لنا ولكم التمام.

[1] أما الذي ذكرت تسألني عنه من رجل تقبل بنهر يكرهه بمائة درهم أو زيادة، واكترى طائفة وعجز عن طائفة، ثم فر حين خاف أن يعجز عليه، واستأجر صاحب النهر قوما يفرقون³¹⁰ الذي شارك الأول /بدرهم ضخمة، حتى إذا بلغ الأول الفراغ من النهر، قدم فقال: إنما انطلقت إلى أهلي ألتمس أو انا فسبقتهموني بأمركم؛ فإن له بقدر ما عمل، ولا يصلح ظلمهم.

[2] وأما الذي ذكرت من رجل استأجر رجلاً بخمسين جريباً، فقال صاحب النخل: إني أستأجرك بفوم أو بر أو ما سوى ذلك من الثمر، على أن أعطيك ثمرة أرضي خمسين جريباً، أو ما سوى ذلك من العدد، وزعمت أنه قطع أن الثمرة هلكت؛ فإن ذلك لا يذهب أجره، وإن اشترط كم ثمرها يعطى أجره، وإن لم تخرج الثمرة التي شرط له منها.

[3] وأما الذي ذكرت من رجل استأجر رجلاً أن يقوم على أرضه ونخله بثمره عشر نخلات، أو عشرين نخلة أو ما شاء الله من عددن، وتزعم أنه أعلم له النخلات التي استأجره عليهن؛ فإن ذلك مما لا يعجبني إلا بشرط مكيلة معلومة وعدت.

[4] وأما الذي ذكرت من رجل اشترى من رجل نخلة فاستوجبها، ثم زعمت أن الذي باع النخل قال: إنما بعثك النخل ولم أبعك الأرض، فكذب ليس له ذلك، إن النخل لا يصلح إلا بالأرض، فله ما جرى فيه عروق النخل.

[5] وأما الذي ذكرت من رجل اشترى من رجل أرضاً لا يرى إلا أنها له، فجاء رب الأرض فقال: أرضي لم أبعها ولم أهبها، فأخبرك أن هاشما قضى في مثل ذلك: أن تقوم الأرض، فما زادت على ثمنها الأول أخذ من بائعها الأول

³⁰⁹ T ، S1 على ربنا رب محمد

³¹⁰ T ، S1 يفرقوا

الذي باعها، وقضى للذي اشتراها، على رب الأرض، ما أنفق فيها، وأجر عمالة ما عمل فيها. ولا أراه إلا نعم ما قضى.

[6] وأما ما ذكرت من رجل يحرك ذكره حتى يهرق، فإن ابن عباس كان يقول: ذلك نائك نفسه.

[7] وأما ما ذكرت من ولائد سبي عمان هل يصلح اتخاذهن؟ فلا يحل لمسلم أن يشتري منهن شيئاً يطأه.

[8] وأما ما ذكرت من رجل يؤخذ بماله وليه فيبيع خدمه، إن قدر له على خدم،

S1: 63

فما باع في أمر حق يؤخذ به عن ماله فلا بأس، وإن باع ماله بعضه /على بعض ومن مال الرجل، أحق أن يؤخذ ما عليه، وأما أن يؤخذ بظلم فإن ماله لا يصلح لرجل /مسلم أن يشتري مالا يغصبه صاحبه، ولوليه إن شاء أن يقول هذا مال الذي يؤخذونني³¹¹ فأنتم أعلم، فهذا لا بأس به، مع أنه يعجبني أن لا يشتري أحد منه شيئاً.

T: 74 L

أنظر، متع الله بك وأصلحك، ألا ترفع كتابي هذا إلى أحد، فإني لولا ما أعرف من بليتك التي كنتم فيها، لم أرجع عليكم شيئاً، ولقد كنت أردت ذلك، ثم كرهت³¹² اعم³¹²، فلا يأتيني من قبلكم أمر تعييني فيه، إلا تصل علي فيه أحد، واكتب إلي بحاجتك مع ثقتك.

والسلام عليك ورحمة الله.

{2}

³¹³ من جابر بن زيد إلى عثمان بن يسار، سلام عليك³¹⁴، فإني أحمد إليك الله الذي لا إله إلا هو، وأوصيك بتقوى الله، الذي أذعنت له الملائكة، وبه قويت للذي قصد إليها منه، فاتق الله، واعلم أن التقوى عليها تعرض الأعمال، وهي غاية الرشد، ولها انتصر³¹⁵ بالمتثلات³¹⁵ لمن ضيع ذلك منه.

واعلم أن نسبة الناس منه دينهم، معروضون على الأسباب التي³¹⁶ نسب³¹⁶ المتقون من التخشع والصيام والصلاة والتحرج والصلة والقنوت والصبر عند

³¹¹ ياخذونني T ، S1

³¹² اعم T ، S1

³¹³ بسم الله الرحمن الرحيم S1

³¹⁴ السلام عليك S1

³¹⁵ المتثلات S1

³¹⁶ نسب T ، S1

عزائم الأمور من زواج النهي، وهم³¹⁷ يوم القيامة من³¹⁸ أهل تأليف في الجنة، متآلفين بنسبهم في الذي بلغوا به الله، فإن استطعت ألا تتخدع بالأمانى، ولا تشتغل بالذي لا يغني فتيلًا، افعل.

واعلم أنك ممن استخلص الله في عظيم الحجة، ولا تكونن متبولًا متعوسًا ناكصًا على عقبه، وتعرض لنائل الله بما تبلغ به مواعده، فإن الخلف لا يؤتى من قبل الله، ولكن العنف ضيم على أهله.

فنسأل الله الذي حمد نفسه بما علم من عظمته، وأثنى على نفسه بمكارمه، واستخلص لنفسه من الثناء على نفسه ما كره لخلقه، أن يغفر لنا ولك، الذي قد سلف، مما أسخطنا فيه، وما سبق في علمه في الذي نحن مصيبون من ما لا بد من مسيرته³¹⁹، حتى يحمل لنا مغفرة الذنوب قبل اللزام والتناوش، ونسأل الله الذي لا إله إلا هو بأسمائه الجليلة³²⁰ الحسنى ذكرها أن يبارك لنا في الذي وكلنا به من أمر دينه.

أما بعد،

فإننا نخبرك من خبرنا أنا سالمون صالحون، إن سلمنا وصلحنا من الذنوب، ورزقنا فاضل علينا، ونعمة متظاهرة، ومن يشفق كذلك.

S1: 64

قد أتاني كتابك، تذكر فيه ما نحمد الله /ونسأله تمامه
وكماله /في الذي يوافق فيه ما أتاك من شكر أنعمه.

T: 72 R

[9] فأما الذي كتبت تسألني عنه من المملوك هل يصلي ولم يختتن؟ فإن الختان من المسلمين سنة واجبة، لا ينبغي تركها، ونكره أن تتركوا لكم مملوكًا غير مختون، ولا يصلي حتى يختتن.

[10] وأما الذي ذكرت من شأن الوليدة، فإن النساء إنما كان خفاضهن تكرمًا، ولسن في ذلك مثل الرجال، إنما عليهن حلق العانة، والطهر.

[11] وأما الذي ذكرت من رجل غر بوليدة مجنونة أو شبه ذلك من الداء، فجامعها مولاه -³²¹ الحدت لا يشعر بشيء من ذلك، فأحب ذلك إلي أن

³¹⁷ وهو S1

³¹⁸ من S1 -

³¹⁹ مسيرته S1 ، T

³²⁰ الجميلة S1

³²¹ على + S1

يصطلحا على صلح؛ لما أصاب من بضعها، فإن كره ذلك مواليها³²² فإنها تجب على الأحدث بالقيمة تقوم، وقد علم داءها، فما بلغت بالذي ذكر من دائها؛ فإنها تكون له بذلك، وأما أن يردّها الرجل بمثل الذي أخذها، وقد أصاب منها، فإن ذلك ربا محض.

[12] وأما الذي ذكرت من رجل غر بوليدة، أخبروه أنها حرة، حتى إذا ولدت أولادا أخبروه³²³ بعد ذلك أنهم غروه، فإن أولاده أحرار، ولا صداق لها ولا نعمة عين، تخلع من قليل وكثير أعطاها.

[13] وأما ما ذكرت من رجل قال لامرأته: إني زويت مرة، ثم قال لها بعد ذلك: إني لعبت معك، وعرضت التماس غيظك³²⁴. فإن ذلك ليس بشيء، هو ذكره وهو كافر به، وإنما يكره للمرأة إذا عاينت زوجها بالزنا.

[14] وأما الذي ذكرت من رجل كان يقذف بالزنا ثم تعاتبه، ثم يصدق عليه بالقذف، قلت: إذا قذف هل يصلح لامرأته أن تتزوجه؟ فإن ذلك لا بأس به، وإنما يكره أن تتزوج من -³²⁵ أقيم عليه حد الزنا.

[15] وأما ما ذكرت من رجل أخذ نخلا في أرض أخرى³²⁶ بنخل، أو أرضا بأرض، أو دارا بدار، أو طعاما بطعام، أو خادما بخادم؛ فإن ذلك لا بأس به ما لم يطلب فيه الفضل، ولم يرب أهله أمرهم في ذلك، فإن الناس كانوا يفعلون ذلك، يأخذون أرضا بالكوفة، ويأخذون³²⁷ مكانها أرضا بالمدينة، وأهل الطائف ومكة وما حولها من القرى يطلبون مرافقهم، ووطنهم أحب ما ملكوا فيه الأموال.

[16] وأما ما ذكرت من رجل تزوج ضارة أمه، / أو يطأ من الولائد ما وطئ والده زوج أمه؟ فذلك كله مكروه، ولعمري لو أنه لم يكرهه أهل العلم إلا الدناة كرهوه؛ فلأنه لا يزاحم من زاحم والده زوج أمه. T: 64 L

[17] وأما ما ذكرت: من وليدة رأت عورة رجل / أو مسته، هل للوالد أن يطأها وقد رأت عورة ابنه ولم تزد على ذلك، والولد مثل³²⁸ ذلك، وقد مس كل

322 مولاها S1

323 أخبره S1

324 غيظك S1 ، T

325 أقيم S1

326 اخر S1

327 ويعطون S1

328 بمنزلة S1

واحد منهما العورة؟ فأحب ذلك إلي أن يتنزها عن ذلك، ويتركانه إلى غير ريبة.

اكتب إلي بحالك، واعلم أنك ممن يعجبني صلاحه وعافيته، نسأل الله لنا ولك صلاح الدنيا والآخرة وعافيتهما.
والسلام عليك.

{3}

³²⁹ من جابر بن زيد إلى طريف بن خلود، سلام عليك³³⁰، فإني أحمد إليك الله الذي لا إله إلا هو، وأوصيك بتقوى الله العظيم، واطلب بها حاجتك إلى الله، فإن العباد لم يصيبوا النجاح لما طلبوا من قبل الله بمثل³³¹ التقوى، بها يعطي الله الرزق في الدنيا، والمخرج من كربها، والمرفق³³² من منافعها، واليسر من عسرها، وبالتقوى تصاب الراحة والروح عند الموت، ورضاء الله ورضوانه ويسره، ونزول³³³ في الجنان والقربة من الله، وعند ذلك عرف المتقون غب التقوى وعاقبتها، ويصغر في أنفسهم الذي عملوا في التقوى لما رأوا من عظيم ثوابها، وود المحسنون لو أنهم ازدادوا إحسانا مع أنهم بلغوا بالذي أخذوا به ما لا يرون أن أحدا أثيب مثل³³⁴ ثوابهم، وكل المتقين في كفاية يشتغل فيها.

واعلم أنه لم يصب المتقون من -³³⁵ الذي -³³⁶ الله عند الموت من التكرمة³³⁷ بالتسليم والريحان، إلى الذي أصابوا فيها بعد ذلك أفضل منه حتى أضجعوا في مضاجعهم، وحتى أبعثوا³³⁸ منها، في كل تلك المواطن استأنفوا³³⁹ من الكرامة ما لم يكونوا يصيبوا قبلها أفضل منها، فلم تنته بهم كرامة الله ترفعهم في المزيد حتى عهدهم العاهد قاعدين عند ربهم في معذرة الملك ملوكا

³²⁹ بسم الله الرحمن الرحيم S1

³³⁰ السلام عليك S1

³³¹ لمثل S1

³³² والمرفق S1، T

³³³ ونزول S1، T

³³⁴ + مثل S1

³³⁵ فيما بعد S1

³³⁶ لقاهم S1

³³⁷ تكرمة S1

³³⁸ بعثوا S1

³³⁹ استأنفوا S1

محبرون، قد خلفوا³⁴⁰ جملة الأذى كله، وذهب عنهم المكروه، واستقبلوا اللذات شبابا، فليس في مثل الذي دخر الله من ثواب المتقين ما يشتغل / عنه مشتغل، ولا يزهد فيه زاهد، ولا يتوانى عن طلبه متوان، مع أن الذي ادخر لأوليائه أفضل من الذي ذكر، وكفى كرامة بالعباد.

فإن استطعت ألا تشتغل عن الله وحاجته بحاجة من ضره أقرب من نفعه فافعل، فإنه من يكون في حاجة الله يكن³⁴¹ الله في حاجته يحفظها كلها، ولا يضيع من حفظه الله، وحسبك الله كافيا³⁴².

واعلم إن اقترفت وسوف وانتظرت بعدات³⁴³ تعدها نفسك؛ ينزل بك الأمر وأنت -³⁴⁴ بعد في³⁴⁵ أمل / وينزل بك الأجل، وعند ذلك تعرف تفريطك S1: 66 وتنزل بك العقوبة، وتأخذك الندامة والشقاء.

والمنتصح المهطع الحيران³⁴⁶ من بلغ منتهى أجله في غير رضوان الله، ذلك تنتهك مفاضحه صرفا، وينزل الكرب عليه بعضه على بعض، مع ما لقي ببشارته من عذاب الله، يراجع الملائكة ويججدها بما لا يراد الله بمخادعته إياه بما عمل إلا سخطا في أنهم يراودهم أن يقبلوا عثرته، وما يزيذونه إلا ضربا، يقلب لوجهه مبطوحا فيضرب منه الدبر، حتى إن هاجت³⁴⁷ حريقا في الدبر قلب فنصب وجهه لهم، فإذا هاجت حريقا تترضى الملائكة ربها لشدة النقمة منه، ولسوء نزله من النار، وكل الذي يصنع به صغير فيما يصيب³⁴⁸ بعد إفضائه إلى ربه الساخط عليه، غير لم يؤخذ أخذه أحد ولم يوثق وثاقه أحد، فينسيه الذي لقي في مضجعه ما أصابه عند الموت، وينسيه الذي أصابه من الهوان في مرقدته الذي أصابه عند مبعثه، وينسيه ذلك كله الذي سبق³⁴⁹ إليه من نار الله الكبرى، إن قذف به في النار أسيرا يداه إلى عنقه في الأغلال، ورجلاه موثوقتان إلى ناصيته، عليه كسوة يأكل بعضها بعضا على جلد لا يتمالك الذي يصيبه من الحريق أن يحترق، فيكسى جلدا غضا رقيقا مع مزيد في الذي ذكر

³⁴⁰ خلعوا S1

³⁴¹ يكون S1

³⁴² كافلا S1

³⁴³ بعدات S1 ، T

³⁴⁴ في S1

³⁴⁵ - في S1

³⁴⁶ والمنتصح المهضع الجبران S1

³⁴⁷ جت S1

³⁴⁸ يصب S1

³⁴⁹ سبق S1

الله وما لم يذكر، وكفى بالذي ذكر شقاء وعذابا، غير أنه من دخل النار فقد شقي وخزي خزيا طويلا لا انقطاع له / فعهد العاهد بالمفرطين قد ارتجت عليهم أبواب النار، سلط عليهم ملائكة نزعت منهم الرحمة، وأعطوه القوة في غلظ وفضاظة³⁵⁰، فليس في مثل الذي ذكر الله من الهوان لمن عقله وأيقن به وصدق به³⁵¹ ما يهون في أنفس³⁵² من يعقله، ولكننا لو نعقل الذي نصف من ذلك أو نذكر أو يبلغ نعته قلوبنا، أو تصدق به لم نلتفت إلى شيء من الدنيا، حتى ننظر إلى ما تصير به الأمور من ذلك، وما نعطي³⁵³ ذلك إلا بالله الذي خلق الخلق لجنة ونار³⁵⁴، فمنتهى العباد إلى ما خلقوا له، فنسأل الله الرحمن الرحيم لجلاله وبقاء وجهه وحسنه ونوره وجماله أن يجعل سعينا عنده السعادة.

أما بعد،

S1: 67 / فإنما سالمون صالحون إن اتقينا الله بحقه، وقد أتاني كتابك تذكر فيه أي من / أهل ودك وصنيعتك ومناصحتك، لما جعل الله بيننا وبينكم من الإسلام، فهو أفضل النسب وأفضل ما تواصل الناس به وتشبث³⁵⁵ حبلمهم بحبله.

[18] أما الذي ذكرت من رجل لا يعرف له وارث إلا أم له مملوكة، فعنقت قبل أن تقسم الميراث، فإن والدته ترثه إن لم يكن أحد أحرز الميراث لحقه، ولو كان له ورثة يحرزونه ثم كانت الوالدة بمنزلة ذلك ورثت.

[19] وأما الذي ذكرت من رجل باع برا بدراهم إلى أجل، قفيزين بدرهم، ثم بلغ أجل الدراهم فحلت دراهمه، فقال صاحب الدراهم: عندي بر إن تشأ أن تأخذ بسعر ما يبيع به اليوم فعلت، وإن تشأ أن أبيع دراهمك فعلت. إن ذلك لا بأس به، إنما هي دراهم، وله أن يأخذ بدراهمه ما شاء من العروض، وإن باعه خمسة أقفزة وزيادة فلا بأس.

[20] وأما ما ذكرت من رجل اشترى مائة من الشياه عددا، على الرجل أن يوفيهها عددا من أي قطيع شاء،-³⁵⁶ تعلم بعينها، ثم عرض له أن يقبض، فأما

³⁵⁰ وفضاظة S1

³⁵¹ بها S1

³⁵² نفس S1

³⁵³ تعطي S1

³⁵⁴ للجنة والنار S1

³⁵⁵ وتتشبث S1

³⁵⁶ قد S1

العدد فلا بأس ببيعه قبل أن يقبض، إلا أن تكون الغنم قد كانت بنسيئة³⁵⁷ إلى أجل، فلا يبيعه حتى يقبضها. وأما ما كان من بيع حاضر فلا بأس به، إنما يكره النسيئة³⁵⁸ من أجل نقصانها، وأما أن يقول عد لفلان المائة التي اشتريت منك فلا بأس بذلك.

[21] وأما ما ذكرت من رجل يجمع جاريتين في جنابة واحدة، فإن ذلك لا بأس به ما لم يجمع بينهما، فأما أن يجمع رجل جاريته / في بيت ثم يخرجها، ثم يرسل إلى الأخرى؛ فذلك لا بأس به.

T: 66 R

[22] وأما الذي ذكرت من رجل أتى امرأته وهي في المستحم تغتسل من المحيض³⁵⁹، قد غسلت فرجها ولم تفض الماء على سائر جسدها، وقد غسلت رأسها؛ فتلك لا تصلح مجامعتها.

[23] وأما ما ذكرت من أن أبين لك شأن المجامعة، وفرج³⁶⁰ المرأة حيث أوتي وكيف صنع الرجل فلا بأس به، والدبر لا يصلح، واذكر اسم الله على المجامعة.

[24] وأما يبيت الرجل جنباً، على أن يعاود امرأته، فليغسل فرجه وليتطهر طهوره للصلاة، وإن لم يرد أن يعاود فليغتسل.

S1: 68 [25] والغسل / أن يبدأ بمذاكره، فيغسلهما ثم يغسل كفيه من غير أن يدخلهما في الماء، ثم تفيض الماء عليك.

[26] وأما ما ذكرت هل يتطهر الرجل بعد ذلك للصلاة فكفى بطهره على مغتسله طهوراً.

[27] وأما ما ذكرت من الماء ما يغسل الرجل، فإنه يغسله ملء التور³⁶¹ ليس بصغير فإذا اغتسلت فادلك الرأس واللحية، وأما نضح الثوب فإن الثوب لا يجنب ولا الفراش.

[28] وأما ما ذكرت هل يصلح أن تمس ثوبك بعد ذلك، فإن أوليت³⁶² أن تمسح³⁶³ ذكرك فلا تمس ثوبك حتى تغسل كفيك، واعلم أنه يستحب أن يغسل الرجل ذكره حين يقوم قبل أن يمسه شيء من ثيابه.

³⁵⁷ بنسيئة S1

³⁵⁸ النسيئة S1

³⁵⁹ الحيض S1

³⁶⁰ في فرج S1

³⁶¹ التور S1 ، T

[29] وأما ما ذكرت أن أبين لك أفضل صلوات الليل، فإنه بلغني أن أفضلها أول نومة، بلغنا أن أول هجعة للناس ينادي مناد: من يدعو فيستجاب له، ومن يستغفر فيغفر له، ومن يتب فيتأب عليه.

[30] وأما ما ذكرت من رجل سبقه الإمام بركعة وأدرك الأخرى؛ فليتم ما سبق به إلى ما أدرك.

[31] وأما صلاة الجمعة مع الإمام ركعتان، فإن لم يدرك شيئاً من ذلك مع³⁶⁴ الإمام؛ فليتم صلاته الأولى.

[32] واعلم أن الجمعة عزيمة من الله على المؤمنين³⁶⁵، وأنه بلغنا: أن الكتاب يكتبون يوم الجمعة على أبواب المسجد حتى يخرج الإمام فيرفعون الكتاب. وقد تحدث الناس أن في الجمعة ساعة لا يدعو فيها مؤمن ربه إلا استجاب له. وقد ذكر لنا عن ابن عباس أن ذلك حين يقوم الإمام إلى الصلاة، وذلك أشغل ما يكون عند صفوفهم.

واكتب إلي بما كانت لك من حاجة³⁶⁶، واعلم أنه حبيب إلي توفيقك الرشد، وما ذلك / إلا بالله الكبير. نسأل الله الكبير المتعال أن يوفقنا وإياك للتي هي أحسن، حتى يرضى بذلك عنا. والسلام عليك ورحمة الله.

T: 66 L

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بسم الله الرحمن الرحيم

من جابر بن زيد إلى غطريف بن عبد الرحمن، سلام عليك، فإني أحمد إليك الله الذي لا إله إلا هو، وأوصيك بتقوى الله، وحسن الثقة في التوكل عليه، فإن الحسن الظن بالله يكن ثقته به، ومن يكن سيء الظن / بالله يكن ثقته بمن لا يكفيه من أمره كفاية، وينزل السيء ظنهم بالله منزلة الردى والخسران، فاتق الله، ولا تكن منه على حرف، وكن صادقاً في النصيحة ولا تكن مخدوعاً خادعاً.

S1: 69

³⁶² وليت T ، S1

³⁶³ مسح S1

³⁶⁴ من S1

³⁶⁵ المسلمين S1

³⁶⁶ حاجتك S1

واعلم أن الأحمق الجاهل من طلب مخادعة الخالق، خالق الخداع، ذلك ينزل به جهله أبواب النفاق.

واعلم أن لأهل النفاق أبوابا، نسبتهم في منازل مختلفة الناس منها ما يصغر³⁶⁷ في أنفسهم أمره يخلف الله به الإسلام فيعلم من شاء بذلك، ومنهم من يصير له بأخلاق³⁶⁸ يتخلق بها في الإسلام.

واعلم أنه كان من أصغر أبواب النفاق في أنفس الناس الخلق³⁶⁹، فأعلم الله به الناس أمرا عرفوه أن مصيره من خالطه من الذي يصغر في أنفسهم إلى³⁷⁰ الناس، فيعرف أهل اللب أن ما سوى ذلك عند الله ما هو أكبر من الخلق³⁷¹ على قدر ما يعظم من أبواب النفاق.

فتعاهد تلك الأمور وتذكر عاقبتها، وتنزه عنها تنزه³⁷² من توقاها توقي من ترك فيه كثير³⁷³ صفة الأمور مخالفة القرية من التي يسخط الله على المقارفين لها، واعلم أن العباد بمنزلة عور³⁷⁴، الكيس منهم المقارف للحزن والبكاء والخوف مخافة الاستدراج³⁷⁵. فإن استطعت أن تعاهد منزلتك في كتاب الله فافعل، فإن منازل العباد مستبينة واضحة، يعرفها أهل المخرج من الزلل والعثرات.

واعلم أن الجبار لم يزل يصنع إلى المناصحين له في أمره من الصنع صنعا عرفهم به منازلهم من الله في كتابه، فما زالوا به للمهتدين منارة يهتدون³⁷⁶ بها فيأخذون في جادتها³⁷⁷، أعلم لهم فيها النور، حتى إذا ذلت لهم طرقها وذلوا³⁷⁸ بعرفانها، ووطنوا قلوبهم عليها، وتبين لهم واضح مهيع سما بهم³⁷⁹ في مزيد الهدى والثبات حتى أعلمهم جملة نسبتهم ونسبة الناس حتى عرفوا أمر الله ونسبته لخلقه ما لم تعرف الملائكة / حتى عرفوا مواضع الكلام وكل لحظة

T: 67 R

³⁶⁷ S1صدر

³⁶⁸ S1بخلق

³⁶⁹ S1الخلف

³⁷⁰ S1إلا

³⁷¹ S1الخلف

³⁷² S1تنزيه

³⁷³ S1كثير

³⁷⁴ S1عور، T

³⁷⁵ S1ألا يستدرج

³⁷⁶ S1، T يهتدوا

³⁷⁷ S1حادثها

³⁷⁸ S1دلوا

³⁷⁹ S1سمايهم

وزلة، فإن استطعت ألا تكون متعاهدا لما لا تغنى³⁸⁰ به شيئا، وتصنع الذي أنت عليه³⁸¹ مسؤل من هذا.

S1: 70 واحذر³⁸² أن تدل على الله بدالة، ولا ترين أن لك فضلا في الإسلام، فإنه من يكون بتلك المنزلة من التزين تزيد / من معرفة فضله، ومن يكن بهذه المنزلة يكبر مقته عند الله، وكفى بالعباد -³⁸³ شقاء أن يكونوا بمنزلة يرون أن لهم³⁸⁴ فضلا على سائر العباد بخير ابتلاهم الله به واختصهم به.

واعلم أن المصغر إليه نفسه المحتقر إليه عمله بمنزلة غبطة³⁸⁵ عند الله وشرف، فنفهم في الذي عمر الله به قلبك من كتاب الله، فإن القارئ له من عرف منزلته، والجاهل له من لم يدر أموره وإن دل به لسانه، فنسأل الله الذي بفضله ورحمته يتدارك أهل الزلل والخطايا أن يتداركنا في الذي أسخطناه فيه. أما بعد،

فإننا صالحون سالمون³⁸⁶ أن عرفنا الله فضله وفواضله، وقد أتاني كتابك تذكر فيه صلاحك وعافيتك، فحمدت الله على ذلك، وسألته تمام كرامته فيما يوافق محبته حتى يمضيينا على ذلك.

[33] وأما الذي ذكرت من رجل أسلف بردا بثوبين، فإن يرد غير البرود؛ فإن ذلك لا يصلح.

[34] وأما الذي³⁸⁷ ذكرت من شأن الحبوب نوعا³⁸⁸ يباع شيء منها نسيئة³⁸⁹ ببر؛ فإن ذلك لا يصلح.

[35] وأما الذي ذكرت من رجل أدرك الإمام يوم الجمعة، وقد تقدم إلى الصلاة، وليس الرجل على طهر ولا ماء، كونه³⁹⁰ إن طلب الماء فاتته الصلاة مع الإمام، هل له أن يتيمم بالصعيد ويصلي؟ فلا لعمرى -³⁹¹ الصعيد في قرية فيها الماء، إنما الصعيد في الفلوات، حيث ليس الماء، فليطلب الماء ثم يصلي

380 تعنا/ تغنى S1

381 عنه S1

382 واحذر S1

383 له S1 +

384 لهم S1 -

385 غيضة S1

386 سالمون صالحون S1

387 ما S1

388 هل + نوعا - S1

389 نسيئة S1

390 لكنه S1

391 ما S1 +

الأولى، فلا والله ما أنا بمرخص له في الصعيد وهو غير متوض³⁹²، وما بال الرجل يأتي الجمعة وهو غير متوض³⁹³.

[36] وأما الذي ذكرت من رجل أصاب من امرأة زنى³⁹⁴ في شركهما، ثم أسلما بعد ذلك هل يصلح له أن يتزوجها يجدد لها، فذلك الذي كان يقول ابن عباس رضي الله عنه: أوله سفاح وآخره نكاح.

[37] وأما الذي ذكرت من رجل اعتمر عمرة ثابتة، ثم رجع إلى أهله فقضى³⁹⁵ له أن يحج، هل له أن يتمتع؟ فإن قدم من يوم عرفة فلا عليه أن يتمتع، فإن قدم قبل ذلك وانف³⁹⁶؛ فإني أكره أن يقيم بمكة أياما محرمة³⁹⁷ فليتمتع، على أنه العمرة في السنة واحدة. اكتب إلي بما كان لك من حاجة³⁹⁸. والسلام عليك ورحمة الله.

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بسم الله الرحمن الرحيم

S1: 71 من جابر بن زيد إلى الحارث بن عمرو³⁹⁹، سلام عليك، فإني أحمد إليك /

الله / الذي لا إله إلا هو، وأوصيك بتقوى الله، والصدق فيما يبلغ به الله، فإن الله موفي الصابرين أجرهم بغير حساب، والصابرون بلغ من أمرهم التوكل على الله، والرضا بقدره الذي قضى الله به⁴⁰⁰ في الأمور كلها، فعليك بتقوى الله، فإن بذلك تنال ما عند الله من مزيد ما لا تعلم من كرامته، وما تقر به الأعين، وذلك كله لمن علم الله من نفسه الصدق والإحسان، نسأل الله الذي وسع علمه كل شيء أن يغفر لنا ما أحاط به علمه من ذنوبنا.
أما بعد،

T: 67 L

392 متوضي S1

393 متوضي S1

394 زنا S1

395 فقضي S1

396 وانف T ، S1

397 محرما S1

398 حاجتك S1

399 عمر S1

400 به S1

فإننا سالمون صالحون، والله حميد محسن، وقد أتاني كتابك تذكر فيه سلامتك، وتعظم فيه الذي بيننا وبينك، فنحمد الله على ما صلح من ذلك، ونسأله الزيادة في الصلاح.

وأما الذي ذكرت من منزلك⁴⁰¹ منا فنحن عارفون بذلك، ونحن راصدون كل الذي صنع، أن جعل فيه عشر ناصرٍ من الناس من قسم الله له الشرف في الدين والدنيا، جعلك الله بخير، لبيب فاضل الرأي، ثابت المنطق، فما زلت، والحمد لله، أخبر لك الذي بلغك الله من الفقه في الدين والنصيحة، ومنتهى ما ترجو فيه فواضل الأمور، فأتم الله عليك النعمة، وزادك من فضله، فأنت ممن نحب وتقر علينا عينه، ونحب رشده ورضاه وعافيته، أنت سيدنا وقديمنا وكهلنا ومن نرجو لكل منفعة وشديدة تنوبنا، فأتم الله علينا وعليك الذي أعطانا⁴⁰² من فضله، وزادك شكرا برضائه عنا.

أتاني كتابك تسألني فيه عن أمور تأمرني ألا أدخر عنك فيه نصيحة أقدر عليها، لعمري إنك لذلك أهل.

[38] وأما⁴⁰³ الذي ذكرت من رجل كانت به جنابة ولم يجد إلا ماء يسيرا، وقد تباعد منه الماء، وقد أدركته الصلاة وخاف أن تفوته، فإني أخبرك أن الرجل إذا كان معه ماء يسير⁴⁰⁴ كانت له رخصة إن خاف ظمأً فليتييم صعيدا كما أمره الله، وإن لم يخف ظمأً وعنده ما لم يبلغ غسله أجمع فإن المسلمين كانوا قبلنا، كان الرجل يغسل فرجه ثم يتطهر طهوره للصلاة ثم يصلي صلاته، فإذا بلغ الماء فليغتسل.

[39] وأما ما ذكرت من رجل يم⁴⁰⁵ الصعيد ثم صلى ثم أدرك الإمام ولم تفته الصلاة، فإن ذلك أحب إلي ألا يتيمم⁴⁰⁶ الصعيد حتى يخاف أن تفوته الصلاة قبل أن يدرك الماء.

[40] وأما الذي ذكرت هل يعيد الرجل الصلاة⁴⁰⁷ إذا أدرك الماء ولم تفته الصلاة، فإن شاء أن يغتسل ثم يصلي فليفعل، فإن اتكل على صلاته فقد صلى،

S1: 72

وأحب ذلك إلي أن / يغتسل، ثم يصلي إن لم يكن فاته حين / الصلاة.

T: 68 R

⁴⁰¹ منزلتك S1

⁴⁰² عطانا S1

⁴⁰³ أما S1

⁴⁰⁴ يسيرا S1

⁴⁰⁵ تيمم S1

⁴⁰⁶ تيمم S1

[41] وأما الذي ذكرت من قلة الماء مع الرجل لا يبلغ طهوره أجمع، هل له أن يغسل رأسه في إناء ثم يعيده على جسده؟ فإني أخبرك أنه يكره أن يعيد الرجل على جسده ما يغسل به رأسه من جنابته، والطامث مثل ذلك يكره لها نحو ذلك، إلا ماء جارياً فقد يصنع ذلك.

[42] وأما ما⁴⁰⁸ ذكرت من رجل يمس مذاكره وهو يصلي؟ فإنه يكره ذلك إلا من وراء الثوب، فليصرف وليتوضأ وليعد صلاته، وأما مس⁴⁰⁹ الإبطين فلا بأس بذلك، أن يمسهما الرجل وهو يصلي.

[43] وأما الذي ذكرت من رجل يصلي المغرب والعشاء والصبح، لم يقرأ فيهن بشيء من قراءة⁴¹⁰، فإن أحب ذلك إلي أن يعيد صلاته فيقرأ فيها، فإنه قد ترك السنة فيها، إلا أن يكون رجلاً أمياً لا يقرأ واغتم⁴¹¹؛ فإن الله لا يكلف نفساً إلا وسعها.

[44] وأما ما ذكرت من إمام قوم لم يركع في صلاة مكتوبة فاتبعه الناس ولم يركعوا، فإن أولئك أحب إلي أن يعيدوا ما⁴¹² خالفوا فيه السنة، فإن من ترك ركوعاً أو سجوداً أو قراءة أو قعوداً لا يستقيم للناس أمر⁴¹³ يخالفون فيه السنة.

[45] وأما الذي ذكرت من رجل تسلف في البر خمسين كراً أو فوق ذلك أو دونه، ثم يبلغ الأجل فيأخذ خمسة وعشرين كراً، ويأخذ ببقية الطعام رأس ماله، فإني أخبرك أن عكرمة فتى ابن⁴¹⁴ عباس يذكر عن ابن عباس أن يأخذ طعامه كله أو دراهمه. وأما أنا لا⁴¹⁵ إلا رجلاً تسلف في كره درهم معلومة، ثم أعطى للأكرار⁴¹⁶ كل درهم معلومة، فإذا بلغ الأجل قبض⁴¹⁷ - طائفة وتجاوز عن طائفة، فإن الرجل يتجاوز عن ما يشاء من ماله ويأخذ ما يشاء فلا بأس، والله جاز⁴¹⁸ العباد⁴¹⁹ بنيتهم فليأخذ، وإنما يكره أن يأخذ طائفة برا وطائفة

407 للصلاة S1

408 الذي S1

409 مس+ S1

410 قرآن S1

411 أو اغتم S1

412 وأما S1

413 أمر S1، T

414 بن S1

415 T، S1

416 للكرار S1

417 في+ S1

418 أجاز S1

419 العباد+ S1

تقوم، فتأخذ قيمة البر دراهم، وأما أن يأخذ طائفة ويتجاوز عن طائفة فلا بأس بذلك، وأما أن يكون أجمل أكرارا بدراهم معلومة جملة فذلك الذي يكره، والله جاز⁴²⁰ العباد بنياتهم.

واعلم أنك، أصلحك الله، بأرض أكره أن تذكر لي فيها اسما، فلا ترو⁴²¹ شيئا مما كتبت به إليك، واكتب إلي بما كانت لك من حاجة، فإني أحب رضاك وما يسرك.

والسلام عليك ورحمة الله وبركاته. / T: 68 L

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بسم الله الرحمن الرحيم

S1: 73 من جابر بن زيد إلى † عنيفة⁴²²، سلام عليك، فإني أحمد إليك الله الذي لا إله إلا هو، وأوصيك / بتقوى الله والسداد والاقتصاد، فإن ذلك أفضل ما يبلغ الله به. واعلم أن أحب الأمور إلى الله أن يؤتى فيها تناه⁴²³ عن ما حرم الله، وتمسك بما جعل فيه قضاة عزيمة.

فإذا جاءك كتابي فليعنيك ما افترض الله عليك في سمعك وبصرك وقلبك وسائر جوارحك، ولا تتوانى عما لا بد لك منه، وتناول ما أنت مستغن عنه، فإن الفقير المعوز⁴²⁴ من استغنى عن المفقر إليه، وافتقر إلى المستغنى عنه، ذلك يكون بمنزلة من لا يتمسك بعصمة ولا يتوثق بعروة، فإن استطعت أن تشهد مع علم جوارحك حفظة الأرض ما تحمد غب أمرك فافعل، فإن الله جعل أولئك السنة ذليقة⁴²⁵ يستنطقها الله في مواطن ينفع الله فيها الصادقين بصدقهم، ويضر الكاذبين بكذبهم، ويكون كذبهم عليهم وبالاً، فاعملوا فسيروا الله عملكم ورسوله، وستردون إلى عالم الغيب والشهادة فينبئكم بما كنتم تعملون.

الخاسر من خسر على تفريطه في الدنيا، فاتق الله واحذر أن تنزل به منزلة من يعبد بالعمى، والترك له بعد المعرفة والبصيرة فيه، وذلك أنه يقول: ﴿أكفرتم

420 جازي S1

421 تروي S1

422 عنيفة S1، T

423 تناهي S1

424 المعوز S1

425 ذليقة S1

بعد إيمانكم فذوقوا العذاب بما كنتم تكفرون)⁴²⁶ ، ذلك بأنهم استحبووا العمى على الهدى، واشتروا الخسران بالمربح، فما ربحت تجارتهم وما كانوا مهتدين، فإن استطعت ولم تملك ذلك إلا بالله، ألا تموت إلا وأنت مسلم فافعل، فإن الإسلام سلم⁴²⁷ وسلامة⁴²⁸، من أن تكون من أهله، تأخذ من أدبه، وتثبت على خلقه، ومن ينتحل به غير ثبات عليه ولا موالاته ينفي منه، والإسلام كل الخلق يعترف له بحقه، ومن يجهل ذلك يكن الله له قليل العتاب، ومن يعرف الإسلام بحقه ثم استخف بعد الإقرار به على نفسه -⁴²⁹ معاتبة الله، ويكون ذلك عليه شقاء، بات لا يعلم أحداً أبعد من الله بعداً، ولا أثبت عليه عذاباً، ولا الخلق كله تتروله⁴³⁰ معادة مناً، وأنتم إن لم يعرف الله منا النصيحة⁴³¹ والإخلاص له في الذي استشهدنا به على أنفسنا، / فاتق الله وكن لما خفت فيه على نفسك حسن المعذرة إلى الله، فإن الله لم يرد على أحد من الأولين معذرة يعرف له العذر فيها فيرد على الآخرين.

واعلم أن أفضل المعذرة ما اعتذرت فيه⁴³² إليه في وجل ومخافة، ومن يعتذر في غير أمر يكبر به ولا يخاف على نفسه فيه الهلاك لا يقبل الله له فيه عذراً، وأفضل التنصل إلى الله من الذنوب واحل⁴³³ من مخادله⁴³⁴ / فيها واستعن عليها لمخافة⁴³⁵.

واعلم أن العبد لم يؤمنع⁴³⁶ مثل الله استنصاحاً ولا أشد حيلة⁴³⁷ ولا أعظم مجازاة⁴³⁸ ولا أقل مؤنة ومرزية، وذلك بأن الله له الدنيا والآخرة ومن فيهما وعليهما، فبلغ من غناء الرب العظيم أن أعطى عباده دنياه ثم استقرضهم شيئاً أعطاهم ليبلو بذلك أخبارهم ولينظر كيف يصنعون فيما آتاهم من فضله.

⁴²⁶ Q:3:106

⁴²⁷ S1 سلام

⁴²⁸ S1 وسالمة

⁴²⁹ S1- ... -

⁴³⁰ T ، S1 نزوله / ترو له

⁴³¹ S1 النصيحة

⁴³² S1 + فيه

⁴³³ T ، S1 واحل

⁴³⁴ T ، S1 مخادلة / مجادلة

⁴³⁵ T ، S1 واستعن عليها لمخافة

⁴³⁶ S1 يصانع

⁴³⁷ S1 حيضة

⁴³⁸ S1 مجازاة

فكن، ولا قوة إلا بالله، كيسا في أمرك حازما، فإن أفضل الكيس التقى، وإن أفضل الحمق الفجور، وإن أفضل الغنى غنى النفس، وإن أفضل الفاقة فاقة النفس، ومن يستغن بنفسه يحسن ظنه، ومن يفتقر بنفسه يسوء ظنه. المؤمنون على أمر معروف، يعرف لهم في الأمور كلها الفضل بأن المؤمنين فضلهم الله بثباته إياهم في الذي أثبتهم عليه من الذي ارتضى لنفسه من مكارم الأمور، فليس من ذلك شيء أثنى الله به على نفسه إلا خص المؤمنين، وجعل لهم فيه أفضل النصيب⁴³⁹، فانظر ما أوتيت من ذلك وما وطنت منه، وأسأل⁴⁴⁰ الله الرحمن الرحيم أن يرحمنا بما رحم به من كان قبلنا من المسلمين، وأن يكون⁴⁴¹ ما وهب وما قسم لخير⁴⁴² يريد⁴⁴³ بنا، ولخير سبق لنا عنده.

أما بعد،

فإننا سالمون صالحون من فضل الله علينا ومواهب منه، ومن هو لك عان به، كالذي تحب أن يكون وتكونون، وقد أتاني كتابك تذكر فيه سلامتك، وحسن بلاء الله لديك في الأمور كلها، فنحمد الله على ذلك، ونسأله ما يرضى به عنا من تمام⁴⁴⁴ النعم والثواب.

أتاني كتابك في الذي تحب أن تسألني عنه مما أن أبلغ⁴⁴⁵ فيه ما تطمئن إليه، فإنما ذلك بالله ومنتته، ليس من ذلك شيء إلا ما يروي الناس عن الناس، وأما من رأي عندنا⁴⁴⁶ فنحن في ذلك أنقص رأيا.

[46] T: 69 L وأما الذي ذكرت من امرأة⁴⁴⁷ تجمع بين الرجل والمرأة حراما بمنزلة / واحدة هي في الحد-⁴⁴⁸ أم لا؟ وهل يحل نكاحها إذا هي تابت من ذلك ولم <تقرب زنى>⁴⁴⁹، أما⁴⁵⁰ الثلاثة فهم في الحدود سواء إذا عرف منهم ذلك، وأما نكاحها فأكرهه لكل مسلم.

439 النسيب S1

440 فاسأل S1

441 يكن S1

442 بخير S1

443 يزيد S1

444 إتمام S1

445 بلغ S1

446 عنده S1

447 امرات S1

448 + سواء S1

449 تقر بالزنا S1

450 فأما S1

[47] وأما الذي ذكرت من امرأة كانت من أرض خراسان لها زوج، ثم خرجت من أرض خراسان⁴⁵¹ إلى أرض حرب لأهل القبلة، وهم أهل قبلة، فتزوجت وكان ذلك دينهم، ثم رجعت إلى خراسان وقد توفي زوجها الأول، وهل يصلح لرجل مسلم أن يتزوجها إذا هي ثابتة؟ فذلك حرام على كالمسلم، ومثل هذا من المسألة لا يعجبني أن تكتب إلي به.

[48] وأما الذي ذكرت من الإذن والتسليم في الفساطيط والأخبية، فهي بيوت، فسلموا على أهلها واستأذنوا. /

S1: 75

[49] وأما ما ذكرت من رجل طلق امرأته، ثم تراضيا على الرضاع حولين كاملين، هل⁴⁵² يصلح له أن يشترط عليها ألا تتزوج فيهما؟ وقولك: فإن تزوجت وحملت، ثم فصلت الولد قبل أن تتم ذلك؛ فإن الشرط عليها قبيح. وإن شرطت ثم تزوجت لم ترتكب حراما، وما كان من رضاع⁴⁵³ قبل التزويج حسب، وما كان بعد التزويج، فإن شاء والد الولد لم يحسبه، إن سخوا يقوم، وإن سخت المرأة نفسا بما أرضعت، ما لم تحمل، فذلك حسن لمن قبله.

[50] وأما ما ذكرت من الميثاق قبل انقضاء العدة، لا أتزوج غيرك، فقد عزمنا العدة، فذلك نكاح لا ينبغي، فإن نكحها بعد انقضاء العدة فرق بينهما، ولم يعجبني مراجعتها، وأن لا يكون تزوجها فوالله لتركها أحب إلي. وكان ابن عباس يقول: إن تركا الميثاق، ومضت لها في غير عدة نحو العدة الأولى؛ فلا بأس بنكاحها. وترك اللبس أحب إلي.

[51] وأما ما ذكرت من رجل ضرب رجلا بسيف أو بعصى، ثم برئ المجروح فأعطي دية الجرح، ثم بعد ذلك بغى وانتقض الجرح، وكان برؤه الأول على عوار، فمات الرجل، فإن ابن عباس كان يقول: قضى عمر بن الخطاب، رضي الله عنه، في ذلك بعد حولين أن الدية كما نقص⁴⁵⁴ من ذلك ما أخذ من جرحه، يقول: إنما أوتي من ذلك.

[52] وأما ما ذكرت من قوم أمهم رجل أمي في صلاة فيها قراءة، فلم يقرأ إلا أم الكتاب لم يقمها، هل تمت صلاة من صلى معه أم يعيد صلاته؟ الجواب في

خراسان S1 خراسان، T⁴⁵¹

فهل S1⁴⁵²

الرضاع S1⁴⁵³

نقص S1⁴⁵⁴

ذلك: أنه يعيد صلاته، فإنه قد خالف السنة، وما كان من أمر خولف فيه السنة
نقض.

[53] T: 70 R وأما قولك أمهم سكران فخلط قراءته، فليعيدوا صلاتهم، فبئس الإمام /
الأمي والسكران، فلا يؤمهم واحد من ذلك، ولا يأتوا⁴⁵⁵ بهم.

[54] وأما ما ذكرت من رجل عليه مال كثير لا يدري ما فعل صاحبه أحي هو
أم ميت، هل على ماله زكاة؟ فإني لا أحب أن يزكي رجل مال رجل هو عليه
دين.

وأما قولك: ما يصنع به؟ فليمسكه حتى يأتي صاحبه ولا يغفل عن المسألة عن
أهله وقومه، فإني قد علمت أنه لا يجب أن يتصدق به، ثم يقومه إن جاء له
طالب.

[55] وأما ما ذكرت من رجل رمى أم ولد له وليدة، فإن ابن عباس كان يقول
في ذلك قولاً شديداً، يقول: تحرم عليه.

[56] وأما الذي⁴⁵⁶ ذكرت من رجلين اشتركا في جارية، فوقع عليها أحدهما
فحملت منه، فقال الآخر: جاريتي عذراء، وقعت عليها فافتضضتها، وكانت
عذرتها تغلبها، فمضى ذلك حتى استبان حملها، فأما الذي وقع عليها فهو زان،/
S1: 76 إن كان محصناً رجم، ووقفت الجارية يوم هي عذراء بأعلى قيمتها فأخذ من
مال الذي وقع عليها نصف ثمنها، فإذا ولدت قوم ابنها، ثم أخذ شريكه نصف
ثمنه.

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بسم الله الرحمن الرحيم

من جابر بن زيد إلى نافع ابن⁴⁵⁷ عبد الله، سلام⁴⁵⁸ عليك، فإني أحمد⁴⁵⁹ إليك
الله الذي لا⁴⁶⁰ إله إلا هو، وأوصيك بتقوى الله، الرب العظيم الذي يعلم ما تجهل
من نفسك، والذي اطلع على ما يضمّر قلبك، وما تختار عينك، وما تبدي أو
تخفي في نفسك، وهو أقرب إليك من حبل الوريد.

⁴⁵⁵ يتأموا S1

⁴⁵⁶ ما S1

⁴⁵⁷ بن S1

⁴⁵⁸ السلام S1

⁴⁵⁹ الله + S1

⁴⁶⁰ إلا S1

فانظر هذا الرب، الذي نزل منك هذه المنزلة فكن منه أشد مخافة، وله أشد اتقاء من غيره، واعلم إن أطعته راففته في داره مع الأنبياء والصديقين والشهداء وحسن أولئك رفيقا. وأنت إن عصيته أدخلك نارا وقودها الناس والحجارة، الآية. فإن استطعت ألا تملك قليلا فان ويشغلك عن كثير باق فافعل، واعلم أن ذلك ليس إليك، فاسأله واستوهبه ممن يملكه، وأعلمه منك الرهبة من مسألتك، والرغبة في استيهابك، ولا قوة إلا بالله، نسأل الله ونرغب إليه أن يعطينا في أمورنا كلها ما يجوزنا به في سبيل الصادقين، ويدخلنا به في جنات النعيم.

أما بعد،

فإننا وربنا محمود، ونحمده إلينا في أمرنا كله كالذي تحب من العافية والسلامة، وذلك عام لمن يعجب ذلك له، وقد أتاني كتابك تعظم فيه الحق والمعروف الذي بيننا وبينك، فما عظمت منه فهو كذلك، والفضل من ذلك في أنفسنا فنحن له راصدون / متمسكون بنصائحه.

T: 70 L

وأما الذي ذكرت تقسم علي أن أكتب إليك بحاجتي وتخبرني أنك بها مسرور، فزادك⁴⁶¹ الله من فضله، وأوفاك في الذي أعطاك بأوفى المؤمنين، فحاجتي أن يعافيك، وأن يقر عينا ببقائك فيما تحب.

[57] وأما الذي ذكرت من الذي تسألني عنه: أن امرأة توفيت ولم تحج قط، فأوصت أن يحج عنها إنسان⁴⁶² من مالها، فقد أحسنت، فأحجوا عنها من هو فقير إلى ذلك، وإن كان من أهل قرابتها.

[58] وأما الذي ذكرت من رجل تزوج حرة ثم تزوج عليها بعد ذلك أمة، فبئس ما صنع وتنزع الأمة، فإن كره ذلك؛ فالحرة على رأس أمرها.

[59] وأما ما ذكرت من رجل يزوج عبده أمته⁴⁶³، ثم يبدأ له أن يتسراها، فليطلق الرجل عن عبده ثم تعتد من طلاقه، فإذا انقضت العدة / فليتخذها إن شاء.

S1: 77

[60] وسألت: إن بيع زوجها فذهب به إلى أرض أخرى ولم يطلق، فطلق⁴⁶⁴ عنه مولاة الذي باعه قبل البيع، فإن لم يجد مولاة الذي باعه فلا ينبغي له أن

461 فجزاك S1

462 إنسان S1 إنسانا T

463 أمة S1

464 فيطلق S1

يمسها ولها زوج، نكح بشهود وفريضة. وأما رجل ينكح وليدته عند⁴⁶⁵ قوم آخرين فلا تحل له حتى يطلقها سيده.

[61] وأما ما ذكرت من دابة ضربت بيدها إنسانا وعليها صاحبها فليس عليه قصاص، ولكن الدية على صاحب الدابة ما بلغ الجرح والنفس .

[62] وأما ما ذكرت من أنكم تسبون أهل أرض، ثم يصير الرجل وامرأته لأحدكم، فسألت: كيف يصنعون بنكاحها إذا صليا جميعا؟ فإذا⁴⁶⁶ شاء مولاها أن يقر نكاحهما على النكاح الأول فليفعل، وإن شاء فرق بينهما، فإن فرق بينهما وقد اجتمعا في أمر الصلاة على نكاحهما الأول فإن العدة من فرقتهما، وإن كانت الفرقة قبل الصلاة فلا طلاق عليها، ويستتطف ظهرا .

[63] وأما الذي ذكرت من رجل تزوج جارية لم تحض، فطلقها بعد أن دخل بها، فلم تحض حتى كان في آخر عدتها بعشرة أيام؛ فإنها تستأنف ثلاث حيض من يوم حاضت، ولا تعتد بشيء مما خلا.

واكتب إلي بحاجتك، فإنه مما يعجبني وأستبشر به. والسلام عليك ورحمة الله وبركاته.

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بسم الله الرحمن الرحيم

من جابر بن زيد إلى يزيد⁴⁶⁷ بن يسار⁴⁶⁸، فإني أحمد إليك الله، بعد السلام عليك، الذي لا إله إلا هو، وأوصيك بتقوى الله، والإسلام والاستسلام له فيما أحببت وكرهت، فإنه ليس لك أن تقدر / في أمر الله ولا أن تختار عليه، فأعط الله من نفسك الإذعان، واجعل قضاءه⁴⁶⁹ عليك حكما، ولا تستبدل به غيره فيختلف عليه، وتنزل بطاعته منزل من أطاع ساداته وكبراءه⁴⁷⁰ فأصلوه⁴⁷¹ السبيل، نسأل الله الوهاب الجواد أن يهب لنا ما وهب لمن قبلنا من الصادقين، ويجعلنا موافين لما وعد.

T: 71 R

465 S1 عبد

466 S1 فإن

467 S1 زيد

468 S1 يسار

469 S1 قضاءه

470 S1 وكبراءه

471 S1 فأصلوه

أما بعد،

فإننا كتبنا إليك ونحن بخير من الله، ونعمه متظاهرة لا يحصى⁴⁷² عددها، ولا نبليغ شكرها⁴⁷³ إلا ما نعيب على أنفسنا فيه، ونزري عليها به، والله المستعان. وقد أتاني كتابك، تذكر الذي ولاك الله من أهل عمان مما ابتلاك به، وتخبرني أنك حريص على الاقتصاد فيه.

لعمري، لئن⁴⁷⁴ فعلت ذلك لا⁴⁷⁵ يسعد به أحد غيرك، ولئن ضيقت ذلك ما يحمل وزر ذلك غيرك، فإن استطعت أن تبلغ بالذي أنت فيه الشرف عند الله / S1: 78 وملائكته والمؤمنين، فإنه ليس من عامل يعمل على عمل فيقصد فيه فيأخذ بالعدل إلا أعطاه الله من شرف الآخرة على قدر شرف عمله.

ولعمري، لقد استعملت على عمل شريف، إن لم يفسدك فيه الشيطان، فإن فساد الشيطان أن يتخذ لك بغيا على عشيرته وغيرهم، فنسأل الله أن يرزقنا أن نعرف له التواضع فيما أعطانا، والاستكانة فيما عرف الصادقين.

[64] وأما ما ذكرت من الرجل تدفع إليه الأرض يعمرها نخلا بثلاث أو نصف، فذلك ما يكره منه، ولكن استأجر رجلا بأجر معلوم فليقم على أرضك ونخلك.

[65] وأما ما ذكرت من أنك تدفع على⁴⁷⁶ رجل برا وبقرا يعمل في أرضك ويزرع فيها وله الثلث أو الربع، فذلك أيضا مما يكره إلا رجلا تعلم له أجره.

[66] وأما الذي ذكرت من رجل تشركه في أرضك ينفق نحو ما تنفق، زعمت أنه يكفيك طائفة من عمله، ويعينك غلامك أحيانا ولا تتفضل عليه، فلا بأس بذلك، وقد يشترك الشريكان فيكونان أحدهما أجزى من الآخر فلا يضر ذلك، ولا تشتط عليه شيئا في عمله.

[67] وأما ما ذكرت من رجل يؤخذ في بيت المال فنتقبل⁴⁷⁷ له وتجعله عليه سلفا، فذلك أكرهه لك، أن ينقد الرجل فينقد عن نفسه، فأما قبالة يقضي⁴⁷⁸ لها زمانا ولا ينقدها فذلك ربا.

أكتب إلي بحاجتك، وبما كانت لك من حاجة. والسلام عليك ورحمة الله.

⁴⁷² نحصى S1

⁴⁷³ لشكرها S1

⁴⁷⁴ إن S1

⁴⁷⁵ ما S1

⁴⁷⁶ إلى S1

⁴⁷⁷ فتقبله S1

⁴⁷⁸ يمضي S1

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بسم الله الرحمن الرحيم

من جابر بن زيد إلى عبد العزيز بن سعد، سلام عليك، فإني أحمد إليك الله الذي
لا إله إلا هو، وأوصيك بتقوى الله، والمؤازرة في طاعته، / والحيطة⁴⁷⁹ على

T: 71 L

دينه وأهله، فإن الله جعل لأهل دينه أهلاً موالياً لهم، ومناصحاً رؤوفاً بهم
رحيماً، حافظاً لما ضيعوا من أمرهم، وساتراً لهم عورتهم، واصطفاهم على
خلقه، واختارهم بعلمه، وجعل لهم المخرج من أمرهم، واليسر مما عسر
عليهم، والرزق بتوكلهم، وذلك بأنهم كانوا متقين لسخطه، راكبين لطاعته فيما
وجدوا من الخفة والثقل، فإن استطعت أن يصحبك الله في الذي أنت فيه فافعل،
فإن صاحبه لا يستوحش إلى غيره، ولا يخاف أمنه، وغاية الكبير به معك أن
تعلمه منك التقى والإحسان، فإن الله مع الذين اتقوا والذين هم محسنون،
وارغب إلى الله واسأله في إلحاف وتضرع ورغبة ورهبة، وتوجه إليه في
‡دعائي⁴⁸⁰ ومسألتي⁴⁸¹ ‡ بوجهه الكريم /، وأسمائه الحسنى، وبحق حمل
S1: 79

عرشه ومن حوله والملائكة والمقربين، والأنبياء والمصطفين، ويصرف عنا
وعنك مكاره الدنيا والآخرة، وأن يعافينا وإياك فيما قدر لنا، وقضاه بنا، وأن
يعصمنا وإياك بالإسلام، وأن يجعله ديننا الذي نلقاه عليه.

أما بعد،

فإننا بخير وعافية من الله إن شكرناه واتقيناها، وأهلك ومن يشفق عليك كالذي
تحب، لم يحدث عليهم، والحمد لله، إلا خيراً.

وقد أتاني كتابك تذكر فيه حسن دفاع الله عنك، زعمت أنك ولّيت أمراً لا تخاف
فيه ‡ عكاكك⁴⁸² ‡ الله عندنا حسنة، ونعمة لا نحصيها، وعادته إلينا في الأمور
كما نحب من غير خير يعلمه منا، فنحمد الله على ذلك كله.

والحيطة S1 479

الدعاء S1 480

ومسألة S1 481

عكاكك / عكاكك؟ S1 482

[68] وأما ما ذكرت من رجل بعث على عمل فتنزله دهاقين الأرض، فإن يكن ذلك من هيبة له فلا يصلح، وأحب ذلك إليّ ألا يرزؤن مرزئة تضرهم، فأما علف الدابة إذا نزل بهم فإنما ذلك بمنزلة سواء، فدع الريبة وخذ⁴⁸³ بالعارف. وكتب إليّ بما حدث من أمر قبلكم. والسلام عليك ورحمة الله.

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بسم الله الرحمن الرحيم

من جابر بن زيد إلى مالك بن أسيد، سلام عليك، فإني أحمد إليك الله الذي لا إله إلا هو، وأوصيك بتقوى الله، فإن التقوى مقبول فيه العمل، ومغفور فيها الذنوب، فإن المتقين غرباء في أهل الأرض، يعرفون حين ينظر إليهم، وحين يتدبر أمرهم في العواقب، وعند عزائم الأمور. وعليك بتقوى الله فترى بها في مجالستك كلها ومواطنك.

واعلم أنك تؤتى من قبل الله، ولن يحيف عليك ولا لك، فإذا جاءك كتابي هذا فكن قاضيا على نفسك، واجتمع أنت وخصمك عند / كتاب الله، ثم ليقص كل واحد منكما قصته على كتاب الله، فإن جمع أمركما فدوما على ذلك، وإن فرق بينكما فليؤت أحدكما صاحبه، ولا تشقيا، وليعترف أحدكما لصاحبه، فإن التنازع والتشاجر هلاك لأمركما.

واعلم أن خصمك في ذلك عمالك، فإن قضى لقولك † واصطلاحا⁴⁸⁴ † فليعرف من أمركما، † هشاشة⁴⁸⁵ † وإن نقض العمل القول كان ذلك غاية الفساد، والحكم بينكما كتاب الله، لا خيرة⁴⁸⁶ فيه، ولا منازعة بهوى، نسأل الله ونطلب إليه بغير دالة ندل بها، ولا قوة ولا خير نمن به من -...⁴⁸⁷ - ولكن إنما / نطلب بالتصديق له في مواعده التي لا خلف لها، أن يكتب في قلوبنا وقلوبكم الإيمان كتابا لا تغيره سراء ولا ضراء، حتى يدخلنا به جنات النعيم، إخوانا على سرر متقابلين.

S1: 80

483 S1 واخذ

484 T ، S1 واصطلاحا

485 S1 هسا عنه؟

486 S1 خيرت

487 T ، S1-...-

أما بعد،

فإننا نحمد إليك الله في حسن الثناء عليه في طلب منا وإلينا، ونخبرك أن الله محمود عندنا في الذي عرفنا من نعمته وما لا نحصي منها، ونخبرك أن الله نعم الرب المحسن هو إذا اعتذر إليه، والخيرات عنده.

أتاني كتابك تذكر فيه سلامتك، وتخبرني أن ذلك عام لمن يعجبكم شأنه من صديقكم وأهل قرابتكم، فحمدت الله على ذلك، وأعجبتني ما ذكرت من الذي صنع الله إليكم من ذلك، فنسأل الله تمام نعمته علينا وعليكم فيما يرضى به من الشكر، والسلام عليكم.

[69] أما الذي ذكرتم من أنكم تنكحون النساء على مهور تسمون بها مالا ونخلا وتزعمون أن لكل نخل ثمنا معلوما فأما [ما فرضتم]⁴⁸⁸ دراهم⁴⁸⁹ علمتموها⁴⁹⁰ نخلا على سنة أرضكم تراضيتم على ذلك فلا بأس بذلك، والشرط أملك.

[70] وأما إذا سميتم دراهم ولم تتراضوا فيها بأمر معلوم، فإن للمرأة الخيار من ذلك إذا شاءت دراهم وإن شاءت نخلا، وليس لها أن تجبر على غير ما تشتهي من ذلك، وإن تراضى⁴⁹¹ الأولياء بأمر دونها فليس لهم ذلك بعد النكاح والفريضة، لأنه لا أمر للأولياء بعد الفريضة، والأمر في ذلك للمرأة.

[71] وأما قولك إن الرجل يقول: أتزوج على ألف درهم أو ما شاء الله من تسمية الدراهم، ثم يقول عند النكاح: إن ذلك في ضاحي⁴⁹² وأرضي ونخلي، لا يعلم الثمن، فإن للمرأة رضاها من ذلك، إلا أن تقول: أعطني بها مالا نحو الذي يؤخذ من قومي في فريضة النكاح، فما لم يعلم من ذلك فلا تكره المرأة على بيع، والذي لها في ماله حتى تستوفي دراهمها إلا أن تشاء أن تتجاوز عما شاءت منه.

[72] وأما ما ذكرت من الصرف تصرفون / الدراهم، ثم لم يشترط لكم، ما لم يجد لكم فردوه ببديل لكم، فلا أحب ذلك، باينوهم عند ذلك، وافصلوا ما بينكم، فإن لم تبصروا الدراهم فاستوروها، فما لم تنقد فيه أبصاركم ولا بصر من تستوروها له فلا يصلح رده، وإن كان غير طائل لا ينفق عنكم.

488 T - ما فرضتم

489 SI دراهمها

490 SI علمتموها

491 SI تراضيا

492 SI أضاحي

[73] وأما الذي ذكرت من اشتراء الأحرار يبتاعون برخص فإن المشتري والبايع سواء /، فذلك حرام على المؤمنين، فتنزه عما أرابك، وانتقل منه ٢ إلى أصابك⁴⁹³، ودع الريبة لأهلها. والسلام عليك.

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بسم الله الرحمن الرحيم

من جابر بن زيد إلى سالم بن ذكوان⁴⁹⁴، السلام عليك، فإني أحمد إليك الله الذي لا إله إلا هو، وأوصيك بتقوى الله، والتوكل عليه، والتفويض إليه، وحسن الظن به، فإن الله نازل من الناس على ظنهم به، فالظانون به ظن السوء عليهم دائرة السوء، فاحذر أن يرديك ظنك بالله.

واعلم أن العباد من ذلك على أمور شتى، ونيات مختلفة، فإن استطعت ألا تقيم ساعة من نهار ولا ليل على أمر تعرف أنه لله سخط فافعل، فإن العاقل ليس كالجاهل، وقد ذكر الله قوما عرفوا نعمة الله ثم أنكروها، فذلك قوم فاسقون، وإنه لعمرى ما أنت بمنزلة تعذر بشيء تأتية بجهل فيه.

واعلم أن المخدوع من خادع الله، فإن الله لا يندع للناس⁴⁹⁵، ولا يخدع ولا يخل، وذلك لما لا يقدر قدر عظمته، وأنه أحاط بكل شيء علما، فلا يكون الله بنفسك، ولا تحمله عيبا، ولا تطلب معاداته، وافزع إليه بالذي ينفعل. نسأل الله القديم منه، السابغة نعمته، العظيم فضله أن يفضل علينا بالذي فضل به على عباده الصالحين، وأن يغفر لنا ولك كل شيء أسخطناه⁴⁹⁶ فيه منذ عرفنا نعمته، وما قبل ذلك.

أما بعد،

فإننا والحمد لله بخير من الله، والرزق⁴⁹⁷ متتابع، حبيب⁴⁹⁸ إليّ أن أسأل عن سلامتك، ويعجبني رشدك وصلاحك في أمرك كله. وقد أتاني كتابك تذكر فيه عافية الله إياك، عافانا الله وإياك، ودفع عنا وعنك الشر كله، فقد أعجبنا ذلك

٤٩٣ الى صابك S1

٤٩٤ ذكوان S1

٤٩٥ الناس S1

٤٩٦ سخطناه S1

٤٩٧ رزق S1

٤٩٨ حبيب S1

وفرحنا به، فحمد الله على ذلك وعلى نعمه كلها، ما من شيء مما⁴⁹⁹ أنت مصيبه⁵⁰⁰ أعجب إليّ من عافيته إياك في دينك.

[74] وأما الذي ذكرت من الذي تشاجر فيه ناس⁵⁰¹ ممن قبلكم من امرأة أخبرت رجلا عن امرأتين له أنهما أَرْضَعْتَهُمَا جميعا، فإن تكن ممن لا تتهم صدقت وفرق بينهم، لأنه جمع بين الأختين، ذلك / من أكبر التحريم والحرام، ولا ينبغي أن يراجع واحدة منهما ما بقي، وله فيما سواهما مندوحة.

T: 74 R

[75] وأما ما ذكرت من رجل وطئ جارية كان أبوه وطئها، لا علم له بذلك، فليبعها فإنه لا تحل له مجامعتها.

S1: 82 [76] وأما ما ذكرت من رجل باع جارية / قد وطئها، وعنده أخت لها فوطئها، وكان بين ذلك ثلاثة أيام، فإن أعجب ذلك إلي أن لا يطأها وقد جمع بينهما ولا يصلح جمع الأختين، وإن كانتا مماليك مما⁵⁰² ملكت اليمين، والعدة في نفس منها على الرجل لا بأس به، فإني أزعم أن ذلك كنحو الحرة إذا طلقت، وإنما أخذ في ذلك بالثقة، وأترك الريبة لأهلها، فإن أعجبه أن يعتزلها كقدر ما لو كان على الأول عدة انقطعت أن يجامعها فليفعل.

واعلم أنه لا يعجبني أن تترك لي عندك كتابا إلا محوته، ولا ترو عني شيئا مما أكتب به إليك.

والسلام عليك ورحمة الله وبركاته.

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بسم الله الرحمن الرحيم

من جابر بن زيد إلى نعمان بن سلمة⁵⁰³، سلام عليك⁵⁰⁴، فإني أحمد إليك الله الذي لا إله إلا هو، المهمل⁵⁰⁵ للعباد بعد السيئات، والمتين كيده، فكن منه على حذر⁵⁰⁶، ولا تشهد⁵⁰⁷ له معصية، فإن الخزي المختزي، المغرور المغتر،

من ما S1 ، T 499

مصيب S1 500

الناس S1 501

من ما S1 ، T 502

اسلمة S1 503

السلام عليك S1 504

المهمال S1 505

حذر S1 506

تنتهك S1 507

المفضوح⁵⁰⁸ غدا من أسخط الله، أو ركب منها شيئاً في عمل أو مهل⁵⁰⁹ لم يثبت منه، والمفرط في أمر الله الأحمق من جزع من فان مكروه، فإن الله أخذه أخذ أليم، وعذابه عذاب شديد، لا يعذب عذابه أحد ولا يوثق وثاقه أحد. أسأل الله ربنا وربك أن يتوب علينا مما أسخطناه فيه، وأن يحولنا عنه إلى ما يرحمنا به ويدخلنا به الجنان.

أما بعد،

فإننا سالمون صالحون من فضل الله علينا، وقد أتاني كتابك تذكر فيه الذي ابتلاك الله به إلا أن يدركك منه برحمة، وتجاوز مما تخافه على دينك ودنياك، فقد عرفت أنك منه على شرف وخطر، فإن استطعت أن تضر بالداني منهما، فإن الدنيا ونعيمها أهون فقداً من نعيم الآخرة.

[77] وأما الذي كتبت تسألني عن خرص النخل على أربابها، ومن إكراهك أناساً على قبالة أرضيهم⁵¹⁰ بها سكان، فذلك لا يحل أكله⁵¹¹، ولكنك من ذلك كراكب الأسد، ولا أخال لك بدا من ذلك. فتنزه ما استطعت مما تكره، فإن الله لا يعمي عليك شيئاً من ذلك⁵¹².

والسلام عليك ورحمة الله.

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بسم الله الرحمن الرحيم

من جابر بن زيد إلى نعمان بن سلمة⁵¹³، سلام عليك⁵¹⁴، فإنني أحمد إليك الله الذي لا إله إلا هو، وأوصيك بتقوى الله، فإن⁵¹⁵ أهل التقوى نزلوا من الله منزلة / لم ينزلها أحد من خلقه، حتى ألطفهم في المودة، وصافاهم في النصيحة،

T: 72 L

واصطفاهم بالكرامة، فما ينتهي بهم المنزل حتى أعطاهم / الحب منهم، قبل حبه لهم أن أبغض من أبغضهم، وعادى من عاداهم، وسخر ممن⁵¹⁶ سخر

508 S1 المفضوح

509 S1 امهل

510 S1 اراضيهم

511 S1 كله

512 S1 فإن الله لا يخفى عليه شيء من ذلك

513 S1 اسلمة

514 S1 السلام عليك

515 S1- وأوصيك بتقوى الله، فإن

516 S1 من

منهم، واستهزأ⁵¹⁷ ممن استهزأ بهم، وخادع من خادعهم، ومكر بمن مكر بهم، فما ينتهي بالنصر للمؤمنين حتى مثل بمن استخف بحقهم.

واعلم أنه يبلغ من كرامة المتقين على الله أن أحب من أحبهم، ووالى من والاهم، وأكرم من أكرمهم، حتى صنع بهم في الأمور كلها خيرته لهم في بلاء ابتلاهم به من قوت رزق، أو ضرر في قسم، أو كرب كربهم، وإنما يصنع ذلك لخير يريد به.

المؤمنون من الله بمنزلة لم يكن ليعظم في الدنيا شيئاً ينقص به حظهم⁵¹⁸ عنده، فإن استطعت أن تستحق التقوى بقولك وعملك فافعل.

واعلم أن العباد لم ينقصوا شيئاً هو أشد عليهم من أن ينقصوا دينهم، فلا يطول بك الأمد، فإن الله قد حذر⁵¹⁹ العباد مثال قوم طال عليهم الأمد. واعلم أن الأمد في العمل أن قوما عملوا فلما تطاول عليهم ذلك أدركتهم السامة فضيعوا ما أخذوا به، وازدادوا فيه بغضاً، حتى تبدلوا للهو والراحة بالعمل ففسقهم الله، وأوسمهم⁵²⁰ بأسوأ السيئة، فإن استطعت أن تعرف الله في الزيادة منك في الإيمان فافعل، فإنه ينسب المؤمنين في الزيادة، ولا ينسبهم في النقصان.

فإذا جاءك كتابي فاعرف منزلتك من الله بما تعرف من نفسك، فإن الإنسان على نفسه بصيرة، يبصر المؤمنين⁵²¹ ما يكره الله فيتداركون ذلك برضاه. فنسأل الله وندعوه دعاء من⁵²² هداه عمله، ومن أوبقته⁵²³ ذنوبه، وأحاطت به خطيئاته أن يستنقذنا من كل شيء نحن فيه، ولا يعيدنا في شيء يستفسدنا منه، ونسأله أن يرزق لنا عملاً يجعله رضاه حتى يثيبنا به الجنان.

أما بعد،

فقد جاءني كتابك تشكو الذي⁵²⁴ أنت فيه من الذي ابتلاك الله به مما تخاف أن يكون الله قد سلك به دينك ودنياك، وإن الغم منك أن تقيم بمنزلة فيها هلاك دنياك وآخرتك، فإذا جاءك كتابي فبع دنياك واشتر بها دينك، فهلاك دنياك ليست بخطر لدينك. فوالله لو كنت بمنزلة ترجو دنياك أن تذهب دينك ما

⁵¹⁷ ويستهزأ S1

⁵¹⁸ حقهم S1

⁵¹⁹ حذر S1

⁵²⁰ ووسمهم S1

⁵²¹ المؤمن S1

⁵²² امن S1

⁵²³ ابقته S1

⁵²⁴ للذي S1

رضيت لك أن تهلك دينك، ولا عذر لك بذلك، بله أنك⁵²⁵ تخاف على دينك
ودنياك.

T: 75 R واعلم أن / ثقة المؤمنين في دينهم الله إذا اعتصموا بالله وعرف منهم الثقة
والتوكل عليه نجاهم من مكاره الأمور، وحق على الله أن ينجي المؤمنين إذا هم
اختاروه على ما سواه.

S1: 84 واعلم أنه ليس من العباد خليفة / يلتمس مرضاة الناس في سخط الله إلا سلب
عليهم من يطلب مرضاته في سخطه حتى يضر به، ويسلط عليه.

[78] كتبت إليّ أن أدلك على المخرج من الذي أنت فيه، وتأمرني أن أبين لك
العدل في الذي أنت فيه، ولعمري لو أخذت في ذلك بأمر أهل العدل لوسعك
ذلك، فإن كان في ذلك في حاجتك فاجمع أهل أرضك، ثم ادع كل إنسان منهم
فاسأله ما يطيق فإنه ليس منهم إنسان إلا كان سيحمل من ذلك أمراً يكون لك فيه
كفاية، فإن الدهاقين يأخذون أضعاف ما كانوا متحملين لك، لا يصل من ذلك
إلى بيت المال إلا القليل يمسكونه لأنفسهم، ويأخذون الشرط دونهم، وأمور
كثيرة تغشاهم، ولا يصل إلى بيت المال منه كثير. فانظر كل إنسان منهم تحمّل
لك أمراً فقل: ليس عليك دهقان دوني ولا شرطي، إن تشأ أن أكتب لك صكاً
بذلك وتدفع إليّ الذي تحمّلت لي، وإن لم يكن عندك اليوم فتحمله في طلب ذلك،
فإذا رفعت إليّ شيئاً من ذلك كتبت لك به صكاً، فإن الرجل لعله يؤخذ منه
ثلاثمائة فلا يصل إلى بيت مالكم منه مائة درهم، تذهب دونكم، ومتى توضع
عن صاحب الثلاثمائة مائة وتؤخذ منه مائتا درهم يبقى له ما يعيش به، وتصيب
حاجتك، فهذا أمر إن أخذت به أهل أرضك تكون لهم فيه راحة، وأرجو أن
تستخرج منهم أمراً يكون أضعاف ما لو حرصت فيه على خراب أموالهم لم تعد
ذلك.

فأما أمر المسلمين إذا ضربوا الجزية فإنه كان قسمة على الرؤوس، درهمين
وجزأين من كل رأس، ثم يتقبل الدهاقين فيقسم ذلك على قدر أهل الأرض
وطاقتهم، فيكون الرجل ينوبه من ذلك مائتان والثلاث ودون ذلك وفوق ذلك،
فكان ذلك أمر المسلمين، فجاءت بعد ذلك أمراء جعلوا يقبلون الأراضي قبالات
يتقبلها دهاقينها ويتنادون في الزيادات حتى ينتهي بهم الأمر إلى ما رأيت،

فإنك S1 525

فانظر أي أمرك أخذت به فعليك بتقوى الله، ولا يكونن من رأيك أن ترى أن الله جاعل / هضمك للناس مخرجا.

S1: 85

[79] وأما الذي كتبت تسألني عنه من الأرطاب والحبوب والثمار هل كان المسلمون يقسمون عليها خراجا؟ فلا لعمري ما كان على أموال أهل العهد بعد الفريضة شيء وإن كثروا.

[80] وأما الذي ذكرت من أموال المسلمين في أرضك، كتبتت تستأمرني في أن تستعين بصدقته في الجزية، فإن ذلك ليس لك، إنما كانت صدقة أموال المسلمين إلى من بعث الصدقة ولا تجعل جزية.

والله مع ذلك، لقد عرفت أنّ الشيطان سيزين لك من أمرك أخاف أن يوبقك، إلا أن يعصمك الله، فنسأل الله أن يعصمنا وإياك من الزلل والفتن، وأن يعافينا وإياك من شرّ كل ذي شر، ونسأله أن يدفع عنا وعنك من أراد بنا سوءا من شياطين الإنس والجن، وندراً إلى الله في نحورهم، ونسأله أن يأخذ بأسماعهم وأبصارهم وجوارحهم ويكفيهاهم بما شاء، حتى يعرفنا عاقبته في شكر برضائه عنا.

والسلام عليك .

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بسم الله الرحمن الرحيم

من جابر بن زيد إلى طريف بن خلود⁵²⁶، سلام⁵²⁷ عليك، فإني أحمد إليك الله الذي لا إله إلا هو، وأوصيك بتقوى الله، وحسن الرعاية لدينه، والتعظيم لله والوجل منه والمخافة، فإن الله مخيف من أمنه، ومؤمن من خافه، ومريض من عظّمه، ومعظم من أرضاه، واعلم أنك نازل من الله بمنزلته منك، وأن لك عنده ماله عندك، فتوابك على الله ثوابه عليك، فإن عند المؤمنين ثوابا من الله، وعند الله ثوابا من المؤمنين، أسأل الله الذي وسع كرسيه السموات والأرض ولا يؤوده حفظهما وهو العلي العظيم، أن يرزقنا وإياك ما يحسن به الثناء علينا والثواب.

⁵²⁶ اخليد S1

⁵²⁷ السلام S1

أما بعد ،

فإني سالم صالح ، علي من الله نعم متظاهرة سابغة، نسأل الله العون على أداء حقه ، وما يرضى به عنا ويرضينا به.

أتاني كتابك تذكر فيه سلامتك ، وتعظم ما بيني وبينك فيما قسم الله، فنحن بذلك عارفون ومنتصحوون فيه وبه، فأنت ممن أحب صوابه ورشده وتوفيقه، لما أعطاكم الله أهل البيت من الشرف في الإسلام والرضا في أهله والثقة عندهم .

[81] وأما الذي كتبت تسألني عنه أن تسلف من الشعير والبر على أنك من أرض فلان فيوتى به لا ترضاه وإنما لك / ما شرطه، فإن أتى صاحبك بطعام أجود من غير أن تشرط على صاحبك فلا بأس بذلك.

S1: 86

[82] وأما الذي ذكرت من بيعه قبل أن تقبضه فإن ذلك لا يعجبني حتى تكتاله أو تستوفيه.

[83] وأما الذي ذكرت من وليدة كان أبوك وقع عليها فأسقطت به سقطا فإن السقط بمنزلة التام في ذلك، وما يعجبني أن تأكل ثمنها من غير أن أحرم ذلك، إلا ما قد علمت من أمرها عند الأمراء؟، فأحبّ إن أنت بعثتها أن تبيعها في أرض لا يعلم بها، فإن أمر الأمراء ما قد علمت، ونحن لهم هائبون يلتمسون علينا العلل.

[84] ثم كتبت إليّ تسألني عن هذا الذي تراه بعد البول، فاغسل منه ذكرك ثم تطهر طهورك للصلاة فصلّ ولا غسل عليك فيه، فإن المدي غير المني.

[85] وأما ما ذكرت من العزل من الخادم فلا بأس به، ولا يقعن في نفسك منه شيء.

[86] وأما ما ذكرت من شأن العين، يسترقى منها ويتعوذ.

[87] وأما ما ذكرت أنه يهدي إليك أقوام يرجون نفعك ولا تستطيع لهم نفعاً فلا تقبل منهم هدية، فإنهم إنما يهدون لك لذلك، فمتى ما لم تفعل ذلك تصير خيانة، فإنك إنما انتمنت على ما أنت عليه أمانة، فأما قوما يهدون لك معروفاً صنعته لم يضر أمانتك شيئاً فلا بأس بذلك.

أنظر، امتع الله بك وافر لنا ولك، ما كتبت إليك من كتاب فامحه، واكتب إليّ بما كان لك من حاجة، فإنني أحب رضاك راغب فيه.

والسلام عليك ورحمة الله .

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بسم الله الرحمن الرحيم

من جابر بن زيد إلى مالك، سلام⁵²⁸ عليك، فإني أحمد إليك الله الذي لا إله إلا هو ، وأوصيك بتقوى الله الذي يعصم من أطاعه ممن عصاه، ولا يعصم منه عاصية، فاعتصم به فإنه نعم المولى ونعم النصير، ومن يعتصم بالله فقد هدي إلى صراط مستقيم، † نه⁵²⁹ على حذر، وكن إنما تعمل لله ، فإنك مهما تعمل لله من خير فلن يدفعه عنك، وما يعمل لغيره فإله عنه غني، فلا تقسمن شيئاً من عملك بين الله وبين غيره، فأخلص له الدعوة والعمل، فإنه من يلقي الله والله له حامد والناس له لائمون يقبل الله فيحمدونه إذا حمده الله، ومن يلقي الله والله له لائم والناس له حامدون يقبل الناس فيلومونه إذا لامه / الله، وذلك أن مصيره إلى الله، والله معط له يوم القيامة عند قضائه بين الناس كل عبد بما كان يحتسب وينوي، وذلك العدل من القضاء، واذكر حسناتك عند الله وثوابه منها فإنه لها موضع صدق يوفرها⁵³⁰ ويزيد فيها من فضله، وقد علمت كيف / تظاهرت⁵³¹ عليك نعم الله وقد خلقت لأمر اتخذ الله عليك فيه الحجة، وبلغك من الله العذر والنذر⁵³²، وقد فهمت الذي أمرت به، وبين لك الذي نهيت عنه، ليعلم الله كيف تعمل لما خلق له، وكيف شكرك لما أنعم الله عليك، وقد اقترب إنفاذ⁵³³ أجلك، وحضر أمر الآخرة، وعند ذلك تنظر شدة ربك وأخبارك كلها، فانظر ماذا أعددت وماذا قدمت له واستدرك عجزك وتفريطك قبل أن تظعن، فإن الآخر من العمل هو أملك لما قبله من الأول بما بعده من العدل، وانك خلقت فرداً عرباناً وكذلك تبعث. فخذ في جهازك وزادك، وخذ عدتك للقاء، وأصلح لنفسك مرجعها واطلب لها منافع الآخرة فإنها مطلوبة لما ضيعت وقدمت، فليهمك أمرها مما ليس كما سلف وتعمد جابدة أجلك فزينه وأصلحه ولا تغتر. أسأل الله لنا ولك التوفيق لما يرضى، والحفظ مما يسخط.

أما بعد،

528 S1 السلام

529 S1 بقلبك، وكن منه على حذر

530 S1 ويوفرها

531 S1 تظاهرت

532 S1 والنذور

533 S1 انفاذ

فإنك كتبت لأكتب إليك أن تشتري لي ناقة من إبل عمان، فإن رأيت ذلك فافعل، وقد كان يعجبني أن تأتيني ناقة نجبية من نجائب عمان، فاشتر لي نجبية تعجبك حسنها ومشيتها وحسن دلها، فإني شيخ قد كبرت، وهي حاجتي لسفر فبغير حسن الخلق فإني تيسر بعثها فابعث بها إليّ مع من شئت أنت، واكتب إليّ بئمنها الذي تشتريها به فأرسل به إليك إن شاء الله.

[88] وكتبت إليّ في شأن المحارثة، إن الأرض والماء والأداة والبقر والبذر⁵³⁴، كل ذلك عندك، فيأتيك ناس يطيبون إليك نفسا بعملهم، ولا يشترطون عليك شرطا، ولا تشتتر عليهم⁵³⁵ إلا الذي يرجونه عندك من الثقة والمعروف وحسن الخلق فيحرثون⁵³⁶ لك ويحافظون على سقي الحرث وحصاده وجمعه، فإذا فرغوا من الحرث أعطيتهم ما شئت أقللت أو أكثرت، فرضوا بذلك وطابوا به نفسا، فلا أرى عليك بأسا فافعل.

[89] وكتبت إليّ أن لك حرثا متفرقا في قرى، فلا يضر إلا تكلف جمعه، ولكن إذا / فرغ⁵³⁷ أهل كل⁵³⁸ قرية من حرثك الذي في قرينتك فافعل فيه الذي عنك⁵³⁹ من حق الله الذي فرض، ولا يضررك إلا تجمعهم جميعا إذا أعطيت الحق الذي فيه.

[90] وكتبت إليّ في مسيرك في قرى الحرث كيف صلاتك، فصل ركعتين حتى ترجع إلى دارك، التي فيها قرارك كنت عاملا أو غير عامل، وإذا سرت في رمضان وكنت ميسرا لصوم فصم، فإن كانت بك مشقة وعسر فافطر، حتى ترجع إلى دارك التي فيها قرارك، فإن الله يريد بكم / اليسر ولا يريد بكم العسر. [91] وكتبت إليّ أنك أردت الإذن في الحج فلم يؤذن لك، وقد كنت حجبت قبل ذلك فجمعت عمرة وحجا، فقد قضيت الذي عليك من العمرة والحج والوقوف فلا أرى عليك هديا في الحج الذي استأذنت له إلا أن تتطوع⁵⁴⁰ بخير فإن الله شاكر عليم.

[92] وكتبت إليّ أنكم تشترون الإبل بالغنم، فلا أرى بذلك بأسا.

⁵³⁴ البدر S1

⁵³⁵ لهم S1

⁵³⁶ فيزرعون S1

⁵³⁷ كل+ S1

⁵³⁸ كل- S1

⁵³⁹ عليك S1

⁵⁴⁰ تطوع S1

[93] وكتبت إليّ في رجل ضربته ففضى له أن مات، وكننت أرسلت إلى بنيه أن يفرضوا الدية فكرهوا وأحبوا أن يتصدقوا، فأعطيتهم قيمة أربعين شائلة، فإن كنت تعلم أنهم تصدقوا عليك بما بقي⁵⁴¹ من الدية طائعين غير مكرهين وطابوا لك نفسا غير خائفين لعقوبتك ولا لضرك إياهم فاقبل ما تركوا من الدية وإلا فأوفهم⁵⁴² ديتهم، فذر⁵⁴³ ما يريبك إلى ما لا يريبك. والسلام عليك ورحمة الله.

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لعبد الملك بن المهلب، من جابر بن زيد.

سلام⁵⁴⁴ عليك، فإنني أحمد إليك الله الذي لا إله إلا هو، وأوصيك بتقوى الله، فإن حسن الرعاية والتشبه⁵⁴⁵ بأخلاق المؤمنين والافتداء بهداهم، واتباع أثرهم⁵⁴⁶ أفضل لأقدامهم⁵⁴⁷ فإن الأول قد أبرأ⁵⁴⁸ الآخر.

فاعلم، أبا عثمان، الله⁵⁴⁹ من نفسك التحري لمسرتة، والاتباع لرضوانه، والتعظيم لدينه، فإن أفضل المؤمنين عند الله شرفا ومنزلة ووجها، أفضلهم تعظيما له ولكتابه ولدينه ولحرمته، ويؤتي الله المؤمنين لكل ذي فضل فضله، فابتغ بما آتاك الله من أمر الدنيا من الفضل فيها على كثير من الناس نصيبا في الآخرة ترجو به الفضل في الدرجات والثواب، فإن الشرف في الدنيا يبلغ الله به شرف أعمال الآخرة وما ارتضى الله⁵⁵⁰ شراف سادات مسودون[†]، ومن يدعي الشرف / في الدنيا بغير شرف في الدين، وقصد في الدين وفضل في عبادة الله، يصيره الله بذلك ذليلا بمنزلة اللوم والصغار، ويكون ما يدعي عليه من ذلك عارا، فكن من الله على حذر شديد، ولا تكن مستهانا مستضعفا عليك أمرك، فنسأل الله رب العرش الكريم العظيم أن يهب لنا ولكم من اليقين ما

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⁵⁴¹ يبقى S1

⁵⁴² فوفهم S1

⁵⁴³ فدع S1

⁵⁴⁴ السلام S1

⁵⁴⁵ التشبيه S1

⁵⁴⁶ آثارهم S1

⁵⁴⁷ اقدامهم S1

⁵⁴⁸ برا S1

⁵⁴⁹ اله S1

⁵⁵⁰ وإنما ذلك أشراف سادات مسودون S1

نتصغر⁵⁵¹ فيه كل شيء من أمرنا حتى لا يعرف منا كبرا يمقتنا الله عليه، ونستحق به عذابه، ونسأل الله الكبير المتعال ، أن يرزقنا له تواضعا يملأ به أجوافنا خشية له.

أما بعد،

فإننا سالمون / صالحون نكثر الحمد له، نضمّر حسن الثنا عليه، فيما أبلانا وأنعم علينا فيكم وفي سائر الامور، فكان الذي امتن الله به من النعم في عافيته إياكم ودفاعه لنا عنكم أمرا لا نبلغ من شكره إلا التقصير، فاتم الله علينا وعليكم⁵⁵² نعمته، وزادكم وإيانا مزيدا من كرامته، وأقر⁵⁵³ عيوننا ببقائكم وعافيتكم والدفاع عنكم حتى يريكم وإيانا في أمركم وأمرنا ما تقر به أعيننا ويكبت به عدونا.

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أتاني كتابك في الذي تسألني عنه من الذي تزعم أن صدوركم لا تتلج إلى فتيا غيري، فلعمري ما أنا إلا متعلم متبع آثارا قد وطئت قبلي، وما عندي من ذلك ثقة ولا دلالة إلا رواية عسى أن نختلف فيها.

[94] فأما الذي ذكرت من الطلاق بعد الخلع، وتزعم أن ذلك نزل ببعض من تشفقون عليه، فإن الفقهاء يقولون لا⁵⁵⁴ طلاق لمن خلع، وكذلك ينبغي أنه إذا أعطى المال فقبله فقد اختلع من أمرها، فليس له فيها أمر، وهي أملك بأمرها فليس بعد قبول المال له فيها مراجعة إلا أن تطيب نفسها، ولو كان طلاق⁵⁵⁵ بعد ذلك لا يمضي للمرأة أمرا إلا بذلك لكان له أن يرتجع فيها إذا شاء، ولكن انقطع أمره منها بعد قبول المال، وإنما طلاقه بعد ذلك بمنزلة من طلق ما لا يملك.

[95] وأما الذي ذكرت من العدة في طلاق البكر قبل أن تطمئ فيدركها⁵⁵⁶ الحيض في بعض فرض عدتها الشهر أو اثنين أو عدة المرأة، قد كان أترابها قد يؤسن من المحيض، ثم حاضت بعد فرض عدتها، وأخرى تطول بها حيضتها في عدتها، وأخرى يطول بها قعود عن حيضتها / وهي من أجل الحيض. كتبت أن أبين لك ما بلغني في ذلك وأراه، فإني أخبرك عن ابن عباس أنه كان يقول :

S1: 90

⁵⁵¹ يتصغر S1

⁵⁵² عليكم وعلينا S1

⁵⁵³ قر S1

⁵⁵⁴ لا - S1

⁵⁵⁵ طلق S1

⁵⁵⁶ فيدركها S1

إنما جعل الله الحيض علماً⁵⁵⁷ للحبل، فكان عدة الحيض علماً للحبل يستبرأ به الحبل، وجعل عدة الشهور للاثي⁵⁵⁸ يئسن من المحيض⁵⁵⁹ مخافة الشبهات. فأما ما كان يقول في الجارية يدركها الحيض في بعض عدتها فكان يقول: تستأنف عدة الحيض أعجب إليّ، لأنه قد تحمل الجارية ولم يعلم لها حيض، وقد تحمل المرأة وهي تحيض في حملها، وما صفا له من الأمر أحب إليه.

وبلغنا عما يروي الناس عن علي بن أبي طالب أنه كان يقول: حيض فيما⁵⁶⁰ مضى من الشهور، وذلك لو كان يستبين للناس حبل أو غيره لا شبهة فيه، والثقة أحب إليّ، وأما التي تطول / بها⁵⁶¹ حيضتها من عادة جرت عليها فالحيض⁵⁶² كما قال الله. وإن كان من حدث داء أو مرض قطع ذلك عنها، فإن استبرأ الحبل لا شك فيه، فالله أولى بالعدر ولا بأس.

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[96] وأما ما ذكرت من المرأة تحيض بعد الإياس، فإن أهل الحيض يختلف أمرهن، ربما عرض للمرأة انقطاع الحيض من غير كبر إلا ما يعرض من الداء، وربما رأت المرأة الدم من غير محيض، فإن عرف أنها ممن لا ينبغي أن تحيض وكان ذلك من غير عادة تجري عليها في مستأنف الأمور فعدة الشهور[†] والإياس بتزويجها⁵⁶³، وإن كان حيضاً ورأت ورأى الناس أنها ممن لا تئأس من المحيض فعدة الحيض فإن الله جعل لذلك مقادير.

[97] ذكرت في الذي سألتني من أمر المحيض إن تزوج على شيء من هذه الحالات⁵⁶⁴ تسأل كيف يصنع فيما عرف أنه خولف فيه الحق والسنة، فإنه ليس من امرأة نكحت في عدة إلا فرق بينهم، فإن أتى عليهم زمان لم يكره أن تعود مناقحة خولف فيه الحق والسنة على شيء من الحالات⁵⁶⁵ إلا ما لم يجامع أهله فقد يكون لهم مراجعة الحق.

⁵⁵⁷ علما S1

⁵⁵⁸ للتي S1

⁵⁵⁹ الحيض S1

⁵⁶⁰ مهما S1

⁵⁶¹ فيها S1

⁵⁶² عليها + S1

⁵⁶³ ولا بأس بتزويجها

⁵⁶⁴ الحالة S1

⁵⁶⁵ الحالة S1

[98] وأما ما ذكرت من نحل الرجل ولده أو أهل قرابته أو زوجته، لك يا فلان من مالي⁵⁶⁶ كذا وكذا، فما شيء لغير الولد من شيء، وإن لم يبين به⁵⁶⁷ فهو ضامن له ، وما علم من شيء شيء من ولد فلان لفلان، وفلانة لفلان من مال كذا وكذا فإن ذلك يمضى له، وإن كان الولد في حجر والده، وما كان نحل لولد لم يبين له لم يعلم ما هو فهو في الميراث، والتنزيه أن يعلم الولد ما أبان له والده من ماله فأعلمه إياه، وإن قال الناس غير ذلك.

[99] وأما ما ذكرت من أمر الزكاة⁵⁶⁸ وفيم فرضت، فلا نعلمها فرضت إلا في الذهب والفضة والأنعام والحرث وفي الأنفس الصاع.

[100] وأما ما ذكرت من الجوهر واللؤلؤ، فلا نعلم فيه زكاة وإن كثر ثمنه، إلا ما أريد به التجارة، وما تفعلوا من خير يعلمه الله.

[101] وأما ما ذكرت من الزكاة في حلي نسائك، وتزعم أن غلبنكم⁵⁶⁹ نسأؤكم⁵⁷⁰ على زكاة حليهن فأجبروهن على ذلك خير لكم، وإن كرهن من قبل التضييع فليس عليكم إلا الأمر بالمعروف.

[102] وأما قولك كيف يمسك الرجل امرأة لا تزكي مالها، فإن ذلك إنما يحرم من قبل الكفر بالزكاة والتكذيب.

زعمت أنما كتبت تسألني عن ذلك تقول سمعته عن فقهاء قبلك وأنهم لم يضعوا الأمر موضعه، وأسأوا الرواية.

اكتب إلي بما كانت لك من حاجة في سر وثقة، فإنك قد علمت الذي نحن فيه، وما نتخوف من الذي يطلب العلل علينا، فلا تعرض لذلك الأمر تهلكنا به، أصلحك الله⁵⁷¹.

نسأل الله القريب المجيب أن يريك وإيانا في أموركم وأمورنا ما تقر به أعيننا، ومن نرجو أن يكون⁵⁷² الله قسم به الدفاع عنا، والسلام عليك ورحمة الله.

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⁵⁶⁶ من مالي لك يا فلان S1

⁵⁶⁷ فيه S1

⁵⁶⁸ من أمر الزكاة -T

⁵⁶⁹ غلبنكم S1

⁵⁷⁰ النساء S1

⁵⁷¹ تعالى+S1

⁵⁷² يكون-S1

بسم الله الرحمن الرحيم

من جابر بن زيد إلى عبد الملك بن المهلب، سلام عليك، فإني أحمد إليك الله الذي لا إله إلا هو، وأوصيك بتقوى الله، فإنه⁵⁷³ من يتق الله يجعل له نورا يمشي به في الناس، ويكفر عنه سيئاته ويعظم له أجرا، فلا تجعلن، والقوة من الله، أحدا من الناس أحق بإعطاء الله ذلك من نفسه منك، فإن الله لم يبتغ ذلك أن يرى أحدا من الناس باتباع رضائه واجتناب ما أسخطه⁵⁷⁴ منك، في الذي صنع الله إليك خاصة، وإليكم أهل البيت عامة، فإن من الحق عليكم أن تنظروا في الأمر الذي تستحق به من الله المزيد عليه، فتأخذون من ذلك بما أنتم حراس على طلبه، فإنه ليس / من عباد الله أحد نقصت⁵⁷⁵ حاجته من مزيد الله له في عاجل الأمر ولا أجله، وذلك يدرك من الله بأن تعرف له نعمه فتشكر له على قدرها، ومن يعرض عن ذلك يكن التغيير مما هو فيه من قبل نفسه والله لا يؤتى من قبله، ولا يميل على خلقه، ولا يظلمهم شيئا من ذلك، هو حق عليه لهم فيما يستحقون به عذابه، فليكن أمرك وما يعينك تفقد نفسك في الذي أنت به معني في الذي خلقت ونفسك تراد به وعليه، فإن الله شاغل العباد يوم القيامة بعضهم عن بعض بما أبدى لهم من عظمتهم، وأراهم من عفوه، حتى عرفت الملائكة ومن سواهم من العباد أن قد بدا لهم من الله ما لم يكونوا يحتسبون، وما أقبل على كل نفس منهم ما اشتغل به عن ما سواه، حتى ما أحد إلا وهو يجاهد⁵⁷⁶ عن نفسه، فرضي كل خليفة نجاة نفسه، والهالك من قضي عليه، ولم يكن له فليح في خصومته.

نسأل الله ونرغب إليه في الذي نسأله وندعوه فيه خوفا وطمعا، ورغبا ورهبا أن يرزقنا وإياكم في الأمور كلها ما تفلح به حجتنا على كل خصم هو لنا حتى يصيرنا بذلك الموقف بين يديه أهل برهان وسلطان.

[103] كتبت إلي تسألني عن عقد النكاح في النساء، فإن ابن عباس كان يقول ما أوصي بعقدهن في النكاح إذا لم يكن وليا، فأما للأولياء فلا يجوز بغيرهم، وما جومع على ذلك كانت فرقة، ولا جماع بعدها على شيء في الحال، / وما

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فإن S1 573

سخطه S1 574

نقصت S1 575

يجاحش S1 576

لم يمس ذلك إلى الأولياء حله، وما كان من عقدة لا ولي له فعرض القضاة يملكه ذلك. أما ما جهل من ذلك فلا نزع أنه حرام بعد النكاح المعلن، وقد يسرني أن يرجع فيه إلى عقدة الرجال من غير فرقة، وقد زعم ابن عباس أنه يسع مثل ذلك بشهادة رجل وامرأتين في مراجعة ونكاح مع الولي، وقد تكون الأمور على سبل متشابهة منها ما لا رخصة فيها والأخرى فيه الرخص، وأهل العلم يشتهون من ذلك ما صفا ويكرهون لبسها، غير أنه قد تكون أمور تتعالى فيما يكره، ولا تبلغ أن تكون حراما، ولا يشتم أهله عليها.

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[104] وأما ما ذكرت / من المرأة لم تمس تطلق عند حضور الموت من زوجها، فلا ولا نعمت عين له حتى تذهب منزلة الضرر وهو حي في مثل عدة من دخل بها إلا أن تزوج المرأة فقد زعم ابن عباس أن ذلك يذهب صداقها كلا وميراثها، زعم أن عليها التربص على مالها حتى يذهب الضرر، ولولا قول ابن عباس في ذلك لسرني وإن تزوجت، إذا عرف الضرر أن تستوجب الأمر كله ما لم يذهب ميراثها.

ورأي من قبلنا أفضل من رأينا الذي نرى، لم يزل الآخر يعرف للأول، وكانوا أحق بذلك المهاجرين مع رسول الله صلى الله عليه وسلم، والتابعين لهم بإحسان، فقد شهدوا وعلوموا، فالحق علينا وطء أقدامهم واتباع أثرهم، واعلم أنه لم يهلك قوم قط حتى نازع الآخر الأول في العلم إذا تمسك أهل العلم بعلمهم.

[105] وأما ما ذكرت من رجل قال لامرأته: ما أراك إلا حراما علي فذلك يجعل على نيته.

[106] وأما ما ذكرت من رجل قال لامرأته: قد خفت أن تكوني زانية، فلا يبلغ⁵⁷⁷ ذلك، وهذا من سوء الظن.

[107] وأما ما ذكرت من امرأة أرادت الخلعة من زوجها فكره عليها، فقالت: بعني تطليقة بألف درهم، ففعل لها، زعمت أنه لا يريد بذلك خلعة، فقد أرى المرأة خدعت زوجها وصار ما أخذ منها من قليل خلعة، وبطل طلاقه بعد ذلك، وهي أملك بنفسها.

[108] وأما ما ذكرت أن لصوصا لقوا قوما فسلبوهم ثم أعطوهم طائفة من الذي سلبوهم إياه، فقال اللصوص: هذا لكم جميعا نعطيكم من أموالكم، فقال

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الرجل منهم عند ملمتهم: قد علمتم أن هذا المال مالي ومتاعي. فقالوا له: قد نعلم أنه مالك ومتاعك، ولكن أعطينا جميعا بيننا من الذي لنا، فالمال من الرجل رزق أن يرد عليه ماله، وليس لقوم أن يأخذوا من مال آخر وإن أعطوه إن كان على هذا النحو/ إلا أن يكون القوم فيما بينهم بمنزلة أهل الحر فقد أخبرتك، وقد بلغني أنهم يتقولون في سعيهم على ذلك.

T: 89 L

SI: 94

[109] وأما الذي ذكرت هل يجيء حال من الميراث يكون فيه لأهل النعمة نصيب، وأما ابن عمر فقد بلغني أنه أوتي بميراث مولاة / فاعتق عنه وتصدق، وأما ابن عباس فكان يقول: لا أرى أهل النعمة، إذا لم يكن غيرهم وجعل لهم ولاية، إلا أحق به، كأنه يجعل الولاية شبه الطعمة لهم ميراثه، وأما إن عرف أهل الرحم والميراث لهم وإن لم يكونوا ممن ينالهم من الميراث في القسمة، وقد يقول الناس فيه ما قد علمت.

[110] وأما الذي ذكرت من المكاتب لها المال، كاتب على أمر ثم اطع مواليها على مالها فقالوا: كتمتنا مالها، فإن كانت سئلت عن مالها فأخبرتهم ألا مال لها فالمال مالهم، وإن كانوا كاتبوها ولم يفتشوا عن شيء فعسى أن يقضى لها مالها، إلا أن ابن عباس كان يقول: إن كان له ولد كتبهم في الرق، ويزعم مع ذلك عكرمة فتى ابن عباس ما كان من رقيق لم نعلمهم على الرق، ويقول: إنما كاتب على نفس واحدة، وما أرى إن جاز له ماله أن يجعل الرقيق بمنزلة المال، وإن أحب مكاتبه الناس أن يقول رجل: لي من الولد وكذا وكذا، ولي مال، وأنا بخير، فلا يكون عليه فيه تباعة.

[111] وأما الذي ذكرت من مكاتب كاتب فكتب لك الكتاب فلم يعط شيئا من أجل صحيفة كتبها إلا أن يعلم منه خير ونصح وجهه، فليس لهم أن يردوه وهو غريم من الغرماء لهم أن يستحثوه بالذي لهم قبله، ويشتدون عليه، غير أن عكرمة يقول: إذا أدى من مكاتبته شيئا فهو غريم من الغرماء، وإن لم يؤد أخذ بالشرط الذي عليه، وزعم أن أهل المدينة لم يزالوا يفعلون ذلك.

[112] وأما الذي ذكرت من مال المضاربة يعطاه الرجل، هو لرجل صاحب المال أن يشترط عليه، فإن ابن عباس ينهى عن ذلك، إلا أن يقول له: لا تبرح بمالي ولا تخاطر به بحرا، فأما أن يقول اشترى كذا وكذا، ولا تشتري كذا وكذا فلا.

[113] وأما الذي ذكرت من شركة الدهاقين في أرضهم فلا يحل لمسلم شركة
مشرك من أهل الكتاب ولا غيرهم لما يستحلون من الذي يحرم عليهم.
والسلام عليك ورحمة الله.

{18}

بسم الله الرحمن الرحيم

من جابر بن زيد إلى خيرة بنت ضمرة.

أما بعد،

S1: 95 أوصيك بتقوى الله الذي امتن الله عليك بتمام النعمة / وكثرتها وفضلها، فإن الله
قد قسم لك من ذلك ما لا تبلغين له جزاء، ولا بد من أن تسألين عن ذلك،
فانظري الذي يوافق الله من الشكر له في نعمه، واعط الله ما تستحقين به الثواب
الذي أثنى به الشاكرين ، فإن الله أثنى الشاكرين ثواباً كأن الذي أعطاهم من
النعيم في الدنيا والتعمير فيها صغيراً، غير أن نعيم الدنيا كلها في نعيم الآخرة
تُوتعمير كالحبة في جوف الأرض.

فليكن حرصك وطلبك وجهدك وجدك واجتهادك وحديثك وهمك في الذي في
الحق أن يعينك أمره، فإن الله قد حذرك وخوفك ناره، وأنذرك بطشه، ورجبك
في جنته، وأخبرك بالذي تنالين ما عنده من الكرامة وما تسكنين به داره،
وتجاوزته به أوليائه عليه وأخبرك بالذي يعذب به من عذب من أعدائه، فكلا
الأمرين قد اتخذ الله به عليك الحجة في الذي أقررت بمعرفة ذلك. فليعلم الله
منك الصدق والجد ، ولا قوة إلا بالله.

نسأل الله ربنا وربك وإلهنا وإلهك أن يصلحنا وإياك لما أصلح به من كان قبلنا
من المؤمنين، وأن يهب لنا ولك في الذي أنعم علينا ما يرضى به عنا، ويجعلنا
به شاكرين.

[114] وأما الذي ذكرت من الماء يحتقن في رحم المرأة اليوم وعامته ثم تصبه
بعد الغسل؟ فلا بأس وليس عليها غسل منه ، إلا أن تنضح المرأة بالماء وتغسل
ما أصابها منه.

[115] وأما الذي ذكرت من امرأة تمس ثوبها ولم تغسل يدها من خرققتها؟ فما
استطاعت المرأة أن توقي ثيابها فلتفعل، مع أن لا بد فعسى أن تعذر بكثير من
تلك الأمور.

[116] وأما الذي ذكرت عن الوليدة يأتيها مولاها فلا ينزل فيها تسأليني عن الغسل؟ فلتغتسل ، فإن الغسل واجب.

[117] والذي ذكرت من نضح الثياب فلا، إلا أن يصيب الثوب ما يغسل فليغسل ما أصاب من الثياب، فإن لم تقدر على ما أصاب من الثوب تنضحه إن شاءت.

[118] وأما الذي ذكرت من الرجل يجامع وليدته في بيت فلا يحل والأخرى تنظر إليه، فهذا أقبح ما يرى الناس.

S1: 96 [119] وأما الذي ذكرت من رجل حلف / لا يجامع وليدته فمضى لذلك سنة أو نحو ذلك لم يجامع شيئاً من ولأئده ثم بد له أن يجامع فليكفر وليجامع، فإنه يعجبني ذلك، ولا تجعل الوليدة في اليمين بمنزلة الحرة إلا في أمر المصاهرة، فقد زعم أنها في ذلك بمنزلة الحرة.

[120] وأما ما ذكرت من رجل حلف لا يجامع امرأته شهراً، ثم مضى الشهر فليطعم وليجامع فأبي ذلك استحب، وأما إن حلف شهراً ثم مضى لذلك أشهر فإن ناساً يزعمون أن اليمين انقطعت يوم الشهر، وأما أنا فيعجبني أن يعلم الرجل امرأته ذلك فيقول قد مضى الشهر / وأنا غير مول منك وجامع، إلا أن يكون لا يستطيع ذلك، فإن مضى ولم يراجع في يمينه بخير فإنه يعجبني أن يجعل عليه يمين مغلظة فإن لم يبين ، غير أن عكرمة يزعم أن شهراً وغير ذلك بمنزلة واحدة.

والسلام عليك ورحمة الله.

تم ما وجد والحمد لله⁵⁷⁸ من جوابات أبي الشعثاء جابر بن زيد رحمه الله.

Conclusion

This study attempts to clarify the significance of the letters of Ğābir ibn Zayd and his influence on the development of the Ibāḍī school of jurisprudence. The author of these historical letters is Ğābir ibn Zayd, an imām who was born in Oman and then lived in Baṣra in the 1st/7th century. The impact and normative authority of Ğābir is documented by the sheer amount of jurisprudence publications over the centuries that refer to or quote his writings.

The 120 fatwas contained in Ğābir's letters are related mainly to personal affairs, explaining to people their rights and duties under Sharia jurisprudence. A modern classification of the fatwas places them into six groups in accordance to their content: Acts of worship (39), family law (39), transactions (31), good manners (6), criminal law (3), and inheritance (2).

An absolute majority of the fatwas (approx. 65%) is related to 'Family Law' and 'Acts of Worship', the latter covering prayers, *az-zakāt*, and *al-ḥağğ*, while the subjects related to family law include marriage, divorce, nurturing, and *al-hul'*. A minority of the fatwas (approx. 26%) covers transactions of commercial and financial natures. A percentage of less than 10% of the fatwas covers good manners, criminal acts, and inheritance.

Ğābir's fatwas do not directly cover any matter related to the Islamic creed *al-'aqīda*, and no direct traces of historical incidents or political issues can be found. The fatwas refrain from any Qur'ān interpretation. Finally, none of the fatwas cover matters related to *al-ğihād*.

All of the letters are structured according to the prevailing standards of correspondence in Ğābir's era. They cohere not only with regard to their general outlining but also in terms of the terminology used. The style remains the same in all of the letters, affirming a consistent authorship.

Political questions were important to Ğābir ibn Zayd, and in his later life he was politically involved very much in person. Other

available texts shed light on his political engagement, as well as the reactions of the political authorities.

In the letters of Ġābir ibn Zayd there are few direct quotations from the Qur'ān. Qur'ān-related terms are found nine times throughout the letters, and there is only one direct quotation from the Qur'ān in which Ġābir cites two verses. The influence of the Qur'ān in the literary style of Ġābir is obvious. There are verses, in part or in full, and there is also much Quranic diction in his writing. Ibn Zayd does not attribute his statements explicitly to the Qur'ān, even when giving answers to questions of jurisprudence.

Regarding the sunna, it is a matter of record that Ġābir ibn Zayd was zealous in the pursuit of the Prophet's pronouncements, even though Ġābir doesn't demonstrate his wide knowledge of Hadith in his letters.

This work involved a search of historic manuscripts containing the letters of Ġābir ibn Zayd. For the first time, three different manuscripts have been carefully examined and compared, and the texts of the letters attentively edited, which should assist future studies in examining these historical texts.

Appendix

Table 1: Transmission of Ġābir's statements in 23 different Hadith books

No.	Book Title	<i>aḥādīṭ</i>
1	<i>Ṣaḥīḥ al-Buḥārī</i> [صحيح البخاري]	13
2	<i>Ṣaḥīḥ Muslim</i> [صحيح مسلم]	8
3	<i>Sunan 'Abī Dāwūd</i> [سنن أبي داود]	8
4	<i>Sunan an-Nasā'ī (al-ṣuġrā wa-l-kubrā)</i> [سنن النسائي (الصغرى والبرى)]	16
5	<i>Musnad Aḥmad ibn Ḥanbal</i> [مسند أحمد بن حنبل]	31
6	<i>Sunan ad-Dārimī</i> [سنن الدارمي]	7
7	<i>Sunan at-Tirmidī</i> [سنن الترمذي]	5
8	<i>Sunan Ibn Māġa</i> [سنن ابن ماجة]	8
9	<i>Mustadrak al-Ḥākim</i> [مستدرک الحاكم]	12
10	<i>Musnad aš-Šāfi'ī</i> [مسند الشافعي]	1
11	al-Bayhaqī's <i>Sunan al-kubrā</i> [السنن الكبرى للبيهقي]	20
12	<i>Mu'ġam aṭ-Ṭabarānī (aṣ-ṣaġīr wa-l-awsaṭ wa-l-kabīr)</i> [معجم الطبراني (الصغير والأوسط والكبير)]	40
13	<i>Sunan ad-Dārqūṭnī</i> [سنن الدارقطني]	11
14	<i>aṭ-Ṭaḥāwī</i> [الطحاوي]	8
15	<i>Ṣaḥīḥ Ibn Ḥibān</i> [صحيح ابن حبان]	9
16	<i>Ṣaḥīḥ ibn Ḥuzayma</i> [صحيح ابن خزيمة]	2
17	<i>Musnad 'Abī Dāwūd aṭ-Ṭayālīsī</i> [مسند أبي داود الطيالسي]	5
18	<i>Musnad 'Abī Ya'āl</i> [مسند أبي يعلى]	5
19	<i>Musnad Ishāq ibn Rāhawayh</i> [مسند إسحاق بن راهويه]	2
20	<i>Musnad Ibn al-Ġa'd</i> [مسند بن الجعد]	8
21	<i>Musnad al-Ḥumaydī</i> [مسند الحميدي]	4
22	<i>Muntaqā Ibn al-Ġārūd</i> [منتقى ابن الجارود]	3
23	<i>Muṣannaḥ 'Abd ar-Razzāq</i> [مصنف عبد الرزاق]	4

Table 2: Piety and Traces of Asceticism in Ġābir's letters

Topic	Letter No.	
Calling to piety	All	الوصية بالتقوى
Thanking Allāh	All	حمد الله
Fruits of piety	3	ثمرات التقوى
The pious	2 and 3	أهل التقوى (المتقون)
The self-indulgent	3	أهل الخسارة (الحيرة)
Slaves of worldly life	1	أهل الدنيا
Honesty and trustworthiness	1	حفظ الأمانة
Not being deceived by false desires	2	عدم الانخداع بالأمني
Seeking forgiveness from Allāh	2	الدعاء بالمغفرة
Effects of piety on individuals and societies	2 and 3	آثار التقوى على الفرد والمجتمع
Seeking refuge in Allāh	3	اللجوء إلى الله في كل الأحوال
Expecting to be granted success and forgiveness from Allāh	4 and 11	حسن الظن بالله
Reliance on Allāh	4 and 11	التوكل على الله
Hypocrisy	4	النفاق
Adherence to Allāh's teachings provided for in Qur'an	4	الالتزام بما ورد في كتاب الله
Modesty	4	التواضع لله والعباد
Patience	2 and 5	الصبر
Being happy with one's fate	5	الرضا بالقضاء والقدر
Thanking Allāh for His Graces	5	شكر الله على نعمه
Submission to Allāh	8	الاستسلام لله
Avoidance of religiously suspicious matters	10	البعد عن الشبهة

Table 3: Distribution of Jurisprudence Matters

Jurisprudence Matter	Number	Percentage
Jurisprudence of acts of worship	39	32.5%
Jurisprudence of family law	39	32.5%
Jurisprudence of transactions	31	26%
Jurisprudence of criminal law	3	2%
Jurisprudence of inheritance	2	2%
Jurisprudence of diverse matters	7	5%
Total	120	

Table 4: Matters Related to Acts of Worship

Acts of Worship	No. of Matters	Percentage
Matters related to purification	18	49%
Matters related to prayers	10	26%
Matters related to fasting	1	3%
Matters related to alms giving	7	18%
Matters related to pilgrimage	3	8%
Overall Total	39	

Table 5: Matters Related to Purification

Fatwa	Number
A man sleeps with two women without performing <i>al-ğusl</i> (purification) in between	21
A man sleeps with his wife before she finishes her post-menstrual <i>al-ğusl</i>	22
A person who sleeps after sexual intercourse without performing <i>al-ğusl</i> while planning to have another sexual intercourse	24
How to perform <i>al-ğusl</i>	25
After performing <i>al-ğusl</i> , do I need to perform ablution to pray?	26
How much water does one need to perform <i>al-ğusl</i> ?	27
After having sexual intercourse, can I touch my clothes before performing <i>al-ğusl</i> ?	28
May I resort to <i>tayammum</i> (dry ablution) so as not to miss the prayer?	35
If I do not have enough water, may I resort to <i>tayammum</i> (dry ablution)?	38
After <i>tayammum</i> (dry ablution) if I have enough time, shall I pray or wait [for water]?	39
If after performing <i>tayammum</i> (dry ablution) I find water, shall I repeat my prayer?	40
What should I do if I do not have enough water to perform <i>al-ğusl</i>	41
Touching genitals during prayers	42
After urinating, a substance comes out of my penis. What should I do?	84
Hours after performing <i>al-ğusl</i> , a fluid which that was trapped in a woman's womb came out. What should she do?	114
[After having sex,] and after using a piece of cloth to clean herself, a woman touched her clothes without washing her hands first.	115
After <i>'azl</i> (<i>coitus interruptus</i>), does the female slave need to perform <i>al-ğusl</i> ?	116
Splashing water on clothes stained with liquids that come out during sexual intercourse.	117

Table 6: Matters Related to Prayers

Fatwas Content	No.
May a male slave pray if he has not been circumcised?	9
The best time for voluntary Night Prayer	29
A man joined a congregational prayer late. Before he arrived the Imām had finished one unit.	30
Friday Prayer	31
Reward of praying the Friday Prayer	32
Reciting Qur'ān in the Evening, the Night and the Morning Prayers	43
Missing <i>ar-rukū'</i> (kneeling) in a congregational prayer	44
May a man who poorly recites Qur'ān become a prayer leader?	52
May a drunken or religiously illiterate man become a prayer leader?	53
Performing <i>qaṣr aṣ-ṣalāh</i> (prayer shortening) during travel and the duration thereof	90/A
Total	10

Table 7: Matters Related to Almsgiving

Fatwa Content	.No
<i>az-zakāt</i> for money that has been lent resp. borrowed	54
Estimating the amount of dates borne by palm trees upon which <i>az-zakāt</i> is due (<i>ḥars</i>)	77
Conversion of charity into <i>ḡizya</i>	80
Collection of crops from scattered farms for the purpose of calculating <i>az-zakāt</i>	89
Items that are subject to <i>az-zakāt</i>	99
Are pearls and jewels subject to <i>az-zakāt</i> ?	100
Are female adornments subject to <i>az-zakāt</i> ?	101
Total	7

Table 8: Matters Related to Pilgrimage

Fatwa Content	No.
Joining <i>al-‘umra</i> with <i>al-ḥaġġ</i> so as to perform <i>al-ḥaġġ tamattu‘</i>	37
A woman who never performed <i>al-ḥaġġ</i> died after she made a testament to the effect that a person should perform <i>al-ḥaġġ</i> on her behalf using her money.	57
A man intended to perform <i>al-ḥaġġ</i> but was denied the permit to go to Makka. Does he need to perform the rite of <i>al-hadī</i> (animal sacrifice)?	91
Total	3

Table 9: Distribution of Matters Related to Family Law

Jurisprudence Topic	No. of Matters	Percentage
Matters related to marriage	27	69.2%
Matters related to divorce	4	10.3%
Matters related to abstinence	2	5%
Matters related to temporary abstinence	2	5%
Matters related to lineage	2	5%
Matters related to compensated divorce	1	2.5%
Matters related to fostering	1	2.5%
Total	39	

Table 10: Matters Related to Marriage

Fatwa Content	Fatwa No.
A man was deceived when he bought a female slave. Later, he slept with her. Now he does not want to retain her.	11
A man jokingly told his wife that he once committed adultery.	13
Is it lawful to marry a person who has been accused of committing adultery?	14
A man married his mother's fellow wife.	16
Can a man marry a woman who saw or touched the penis of another man?	17
How to perform sex (in a lawful way)	23
Can a man and a woman who committed adultery with each other when they were non-Muslims get married after they have embraced Islam?	36
Marital relations to a former prostitute	46
A married woman travelled to another country, and there she married another man.	47
A man accused his female slave of adultery. Does that accusation render her <i>ḥarām</i> for him?	55
Two men jointly bought a female slave. One of them slept with her.	56
A man got married to a free woman, then got married to a female slave.	58
A man married his female slave woman to his male slave. Now the master wants to take her as a concubine.	59
Captive couples	62
Dowry in the form of money and palm trees	69
A bride with no defined dowry: What options does she have?	70
A person defined the amount of a dowry. Later, he changed his mind and offered an equivalent number of palm trees or the likes.	71
A woman told a man that she breastfed both of his two wives.	74

A man slept with a female slave with whom his father had slept.	75
A man slept with two slave sisters.	76
Practising <i>ʿazl (coitus interruptus)</i> with a female slave	85
Marriage before <i>al-ʿidda</i> expires	97
A man retains his wife although she does not pay <i>az-zakāt</i> for her adornments.	102
Marriage in the presence/absence of the bride's guardian	103
A man who vowed not to sleep with his wife	105
A man said to his wife, "I fear that you may have committed adultery."	106
Having sex with two female slaves at the same time	118

Table 11: Matters Related to Divorce

Fatwa Content	Fatwa No.
May a master divorce a female slave married to his male slave who has become missing?	60
Divorce after <i>al-ḥulʿ</i>	94
<i>al-ʿidda</i> of a virgin who is too young to menstruate	95
Divorce made by a dying person	104

Table 12: Matters Related to Abstinence

Fatwa Content	Fatwa No.
A man took on oath not to have sex with his slave woman, and more than a year has elapsed.	119
A man took on oath not to have sex with his wife for a month.	120

Table 13: Matters Related to the Waiting Period

Fatwa Content	Fatwa No.
Marriage promises made before <i>al-‘idda</i> expiration	50
Girls’ <i>al-‘idda</i>	63

Table 14: Distribution of Topics Related to Jurisprudence of Transactions

Jurisprudence Topic	Number	Percentage
Sales matters	20	69.2%
Tenancy matters	1	10.3%
<i>ḥarāḡ</i> matters	2	5%
<i>mukātaba</i> matters	2	5%
<i>muzāra‘a</i> matters	7	5%
<i>Muḍāraba</i> matters	1	2.5%
Debts matters	1	2.5%
Total	34	

Table 15: Matters Related to Sales

Sales Matters	Fatwa No.
A man sold his palm tree. Later, he claimed that the land underneath is not included in the deal.	4
An unauthorized agent conducts a sale. Later, the owner appears.	5
Purchase of an Omani slave woman	7
A master (un)lawfully sells his male slave’s property.	8
Sale of an item for a similar one	15
Sale of ewes on credit	20

A man lent another man some cloaks and took two garments as a guarantee.	33
Sale of grains on credit for a different type	34
A man lent another man some wheat. When the payment was due he got some food for the remainder of the debt.	45
Hiring a man to cultivate a land with palm trees in consideration of a third or a half of the resulting proceeds	64
Hiring a man to cultivate a land in consideration of an amount of wheat or cows	65
<i>muzāra`a</i>	66
A man was given money from the State's Treasury. Later, the treasurer turned that into a loan.	67
Dirham exchange	72
Sale of free people	73
Paying off a borrowed item with one of a superior quality	81
A sale that precedes taking possession	82
Sale of female slaves	83
Sale of camels for sheep	92
Having a Christian or Jew as a partner in land ownership	113
Total matters:	20

Table 16: Matters Related to Tenancy

Fatwa Content	Fatwa No.
A hired worker fled so the landlord hired a substitute.	1

Table 17: Matters Related to Crop Sharing

Fatwa Title	No.
<i>Muzāra 'a</i> and Wages	2
Wage of a person who practises <i>muzāra 'a</i>	3
Hiring a man to cultivate a land with palm trees in consideration of a third or a half of the resulting proceeds without specifying the wage	64
Hiring a man to cultivate a land with palm trees in consideration of a third or a half of the resulting proceeds without specifying the wage	65
<i>Muzāra 'a</i>	66
<i>Muzāra 'a</i> with no wage clause	88
<i>Muzāra 'a</i> with Christians or Jews	113

Table 18: Matters Related to Taxation

Fatwa Content	Fatwa No.
A piece of advice given to a governor regarding <i>ḥarāğ</i> and financial corruption	78
No additional <i>ḥarāğ</i> may be collected	79

Table 19: Matters Related to the Release from Slavery

Fatwa Content	Fatwa No.
A female slave woman entered into a <i>mukātaba</i> agreement claiming that she had no money. Later, it was discovered that she did not tell the truth.	110
A male slave entered into a <i>mukātaba</i> agreement.	111

Table 20: Matters Related to Gifts

Fatwa Content	Fatwa No.
A civil worker is well treated by merchants out of fear of his authority.	68
Acceptance of a present that yields a benefit	87
A man gives a member of his family something (defined/undefined) as a gift.	98

Table 21: Matters Related to Ethical Behaviour

Fatwa	Fatwa No.
Masturbation	6
Female circumcision	10
Greeting and pre-entrance permission request in terms of tents	48
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Table 22: Matters Related to Blood Money

Fatwa Title	Fatwa No.
<i>Diya</i> in case of accidental homicide	51
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<i>Diya</i> in case of accidental homicide; seeking forgiveness from the victim's family	93

Table 23: Jurisprudence of Inheritance

Fatwa Title	Fatwa No.
If a slave mother is freed before the legacy of her son is distributed, is she entitled to be his heir?	18
Are freed slaves eligible to be heirs?	109

Fatwas Numbered and Translated

1.

Q: A man agreed to work on a waterway for one hundred dirhams or more. He completed part of the work, but he was unable to complete the other part. Then he fled when he feared that he would be unable to continue. The owner of the waterway hired other workers. There was a gap between their pay and that of the initial man. When the work was done, the first worker came back and said: “I just went to my family to seek help, and you gave my job to others, without waiting for me!”

A: The first worker is entitled to an amount that equals the work he has already done so far. The owner is not allowed to treat the other workers unjustly.

أما الذي ذكرت تسألني عنه من رجل تقبل بنهر يكره بمائة درهم أو زيادة، واكثرى طائفة وعجز عن طائفة، ثم فر حين خاف أن يعجز عليه، واستأجر صاحب النهر قوما يفرقون الذي شارك الأول بدراهم ضخمة، حتى إذا بلغ الأول الفراغ من النهر، قدم فقال: إنما انطلقت إلى أهلي ألتمس أو انا فسبقتوني بأمركم؛ فإن له بقدر ما عمل، ولا يصلح ظلمهم.

2.

Q: A man hired a worker for fifty *ḡarībs*. The owner said to the worker, “I hire you to cultivate garlic, wheat or any other crop. In consideration I will pay you in-kind: fifty *ḡarībs* or any other amount.” Then the owner swore that the harvest was ruined.

A: The worker’s remuneration shall be paid. If the owner made the remuneration conditional on the amount of the yield, then he must pay the remuneration, even if the crops upon which the pay was conditional do not emerge.

وأما الذي ذكرت من رجل استأجر رجلا بخمسين جريبا، فقال صاحب النخل: إني أستأجرك بفوم أو بر أو ما سوى ذلك من الثمر، على أن أعطيك ثمرة أرضي خمسين جريبا، أو ما سوى ذلك من العدد، وزعمت أنه قطع أن الثمرة هلكت؛ فإن ذلك لا يذهب أجره، وإن اشترط كم ثمرها يعطى أجره، وإن لم تخرج الثمرة التي شرط له منها.

3.

Q: A man hired a worker to cultivate his land and look after his palm trees in consideration of the yields of ten or twenty or any other number of palm trees, specifying which palm trees the yields of which will constitute the remuneration.

A: I dislike this transaction. The exact quantity of yields to be paid as remuneration needs to be specified beforehand.

وأما الذي ذكرت من رجل استأجر رجلا أن يقوم على أرضه ونخله بثمره عشر نخلات، أو عشرين نخلة أو ما شاء الله من عددن، وتزعم أنه أعلم له النخلات التي استأجره عليهن؛ فإن ذلك مما لا يعجبني إلا بشرط مكيلة معلومة وعدت.

4.

Q: A man bought a palm tree, and the seller accepted the deal. Then the seller argued that he sold the buyer only the palm tree itself and not the land underneath where it is cultivated.

A: The seller is a liar. Palm trees cannot survive without the land underneath. The buyer now owns the palm tree and the piece of land where the roots of that palm tree exist.

وأما الذي ذكرت من رجل اشترى من رجل نخلة فاستوجبها، ثم زعمت أن الذي باع النخل قال: إنما بعته النخل ولم أبعك الأرض، فكذب ليس له ذلك، إن النخل لا يصلح إلا بالأرض، فله ما جرى فيه عروق النخل.

5.

Q: A man bought a piece of land from another man believing that the seller is its sole owner. The real owner came and said: “This is my own land. I have not sold it and or given it away.”

A: Adjudicating a similar case, Hāšim ruled as follows: “The price of the plot shall be estimated. Any increase on its original value should be confiscated from its first seller. However, the real owner shall pay the buyer all the costs he incurred and the work he has done there.” Gābir commented, “I highly recommend Hāšim’s ruling.”

وأما الذي ذكرت من رجل اشترى من رجل أرضا لا يرى إلا أنها له، فجاء رب الأرض فقال: أرضي لم أبعها ولم أهياها، فأخبرك أن هاشما قضى في مثل ذلك: أن تقوم الأرض، فما

زادت على ثمنها الأول أخذ من بائعها الأول الذي باعها، وقضى للذي اشتراها، على رب الأرض، ما أنفق فيها، وأجر عمالة ما عمل فيها. ولا أراه إلا نعم ما قضى.

6.

Q: A man stimulated his penis until ejaculation.

A: ‘Abdallāh ibn ‘Abbās used to deem this an example of having sex with oneself.

وأما ما ذكرت من رجل يحرك ذكره حتى يهرق، فإن ابن عباس كان يقول: ذلك نائك نفسه.

7.

Q: What about Omani woman as slaves?

A: Muslim men are not allowed to buy such women for sexual purposes.

وأما ما ذكرت من ولائد سبي عمان هل يصلح اتخاذهن؟ فلا يحل لمسلم أن يشتري منهن شيئاً يطأه.

8.

Q: Can a male slave execute transactions with his property without consent from his master?

A: No one should agree to transactions like this without consent of the master. The master must be consulted.

وأما ما ذكرت من رجل يؤخذ بماله وأليه فيبيع خدمه، إن قدر له على خدم، فما باع في أمر حق يؤخذ به عن ماله فلا بأس، وإن باع ماله بعضه /على بعض ومن مال الرجل، أحق أن يؤخذ ما عليه، وأما أن يؤخذ بظلم فإن ماله لا يصلح لرجل /مسلم أن يشتري مالا يغصبه صاحبه، ولوليه إن شاء أن يقول هذا مال الذي ءتأخذونني ءفأنتم أعلم، فهذا لا بأس به، مع أنه يعجبني أن لا يشتري أحد منه شيئاً.

9.

Q: Is it lawful for a male slave to pray even when he has not been circumcised?

A: *Hitān* [= circumcision] of Muslims is confirmed sunna (*sunna wāğiba*), and should not be neglected. It is un-recommendable to leave any male slave uncircumcised. No male slave may perform prayer until he is circumcised.

فأما الذي كتبت تسألني عنه من المملوك هل يصلي ولم يختتن؟ فإن الختان من المسلمين سنة واجبة، لا ينبغي تركها، ونكره أن تتركوا لكم مملوكا غير مختون، ولا يصلي حتى يختتن.

10.

Q: What about female circumcision in terms of slave women?

A: Unlike men, women are recommended to become circumcised, but it is not obligatory. However, the removal of pubic hair and the maintaining of purity are obligatory for women.

وأما الذي ذكرت من شأن الوليدة، فإن النساء إنما كان خفاضهن تكرما، ولسن في ذلك مثل الرجال، إنما عليهن حلق العانة، والطهر.

11.

Q: A man bought a female slave but the seller deceived him into believing the woman was sane and it is later determined that she was mad or had otherwise mental disorders and her new owner had had sex with her prior to discovering the deception, what is the solution?

A: The best solution in my view is that they [i.e., the seller and the buyer] enter a compromise between them as the buyer has already slept with her. If no compromise is reached then the slave woman's price shall be estimated in the light of her illness and shall be retained by the buyer for such new price. However, if the buyer returns the slave woman to the seller and redeems the entire price, though he slept with her, that will be a form of sheer *ribā* [= usury].

وأما الذي ذكرت من رجل غر بوليدة مجنونة أو شبه ذلك من الداء، فجامعها مولاها الحدث لا يشعر بشيء من ذلك، فأحب ذلك إلي أن يصطلحا على صلح؛ لما أصاب من بضعها، فإن كره ذلك مواليها فإنها تجب على الأحدث بالقيمة تقوم، وقد علم داءها، فما بلغت بالذي ذكر

من دائها؛ فإنها تكون له بذلك، وأما أن يردها الرجل بمثل الذي أخذها، وقد أصاب منها، فإن ذلك ربا محض.

12.

Q: A man got married to a woman. Only after that woman had given birth to more than one child, he discovered that she was a slave woman, and that he was deceived.

A: Her children shall be free people not slaves. She is not entitled to a dowry. She shall be stripped of everything given to her by that husband.

وأما الذي ذكرت من رجل غر بوليدة، أخبروه أنها حرة، حتى إذا ولدت أولادا أخبروه بعد ذلك أنهم غروه، فإن أولاده أحرار، ولا صداق لها ولا نعمة عين، تخلع من قليل وكثير أعطاه.

13.

Q: A man told his wife that he committed adultery once. Later, he said to her: "I was joking. I just wanted to vex you!"

A: This is not an offence that adversely affects their marital relationship. The husband just told his wife a lie. However, it is unrecommendable for a wife to remain with her husband if she has seen him committing adultery.

وأما ما ذكرت من رجل قال لامرأته: إني زنيبت مرة، ثم قال لها بعد ذلك: إني لعبت معك، وعرضت التماس غيظك. فإن ذلك ليس بشيء، هو ذكره وهو كافر به، وإنما يكره للمرأة إذا عاينت زوجها بالزنا.

14.

Q: Is it lawful for a woman to marry a man who has been accused of committing adultery?

A: There is nothing wrong in this case. It is only nonrecommendable for a woman to marry a man who has been punished for committing adultery.

وأما الذي ذكرت من رجل كان يقذف بالزنا ثم تعاتبه، ثم يصدق عليه بالقذف، قلت: إذا قذف هل يصلح لامرأته أن تتزوجه؟ فإن ذلك لا بأس به، وإنما يكره أن تتزوج من عليه حد الزنا.

15.

Q: Is it lawful for two parties to exchange palm trees for another palm trees, or a plot for another plot, or a house for another house, or food for another food, or a slave for another slave?

A: There is nothing wrong here. All these exchanges are lawful, unless one party asks for an extra amount or the transaction is suspicious. Companions used to do that. They exchanged plots in al-Kūfa for plots in Medina. Companions living in at-Ṭā'if and Mecca and the towns around them used to do so although their property in their places of birth were their very favourite properties.

وأما ما ذكرت من رجل أخذ نخلا في أرض أخرى بنخل، أو أرضا بأرض، أو دارا بدار، أو طعاما بطعام، أو خادما بخادم؛ فإن ذلك لا بأس به ما لم يطلب فيه الفضل، ولم يرب أهله أمرهم في ذلك، فإن الناس كانوا يفعلون ذلك، يأخذون أرضا بالكوفة، ويأخذون مكانها أرضا بالمدينة، وأهل الطائف ومكة وما حولها من القرى يطلبون مرافقهم، ووطنهم أحب ما ملكوا فيه الأموال.

16.

Q 1: A man married his mother's fellow wife. What do you think of that? Q 2: A man slept with a female slave with whom his father had slept.

A: Both acts are repugnant. Even if some scholars do not deem such hideous actions as repugnant, it is something only the least moral people will do.

وأما ما ذكرت من رجل تزوج ضارة أمه، أو يطأ من الولائد ما وطئ والده زوج أمه؛ فذلك كله مكروه، ولعمري لو أنه لم يكرهه أهل العلم إلا الدناة كرهوه؛ فلأنه لا يزاحم من زاحم والده زوج أمه.

17.

Q: A free man saw or touched the genitals of a female slave. Is it lawful for the father or the son of that man to sleep with her?

A: I would prefer that the two of them abstain from sleeping with her to avoid suspicions.

وأما ما ذكرت: من وليدة رأت عورة رجل أو مسته، هل للوالد أن يطأها وقد رأت عورة ابنه ولم تزد على ذلك، والولد مثل ذلك، وقد مس كل واحد منهما العورة؟ فأحب ذلك إلي أن يتنزها عن ذلك، ويتركاه إلى غير ربيبة.

18.

Q: A man died and he had no known heirs but a slave mother who had been freed before the legacy was distributed.

A: She inherits from him if there are no other heirs who have prevalence over his legacy. However, if there are other heirs and his mother is in a position to receive a share of his legacy, she will inherit a share thereof.

أما الذي ذكرت من رجل لا يعرف له وارث إلا أم له مملوكة، فعتقت قبل أن تقسم الميراث، فإن والدته ترثه إن لم يكن أحد أحرز الميراث لحقه، ولو كان له ورثة يحرزونه ثم كانت الوالدة بمنزلة ذلك ورثت.

19.

Q: A man sold a quantity of wheat for an amount of (dirham) agreeing to receive such amount of dirham at a later date. The price was one dirham per each two *qafiz*s. Then, when the payment became due, the buyer said to the seller: "I have got wheat. You can either take from such wheat as much as your money is worth at today's price or you can take the price in dirhams."

A: This is lawful. The seller may take any goods from the buyer at a corresponding price. The new price may be one dirham per each five *qafiz*s or more.

وأما الذي ذكرت من رجل باع برا بدراهم إلى أجل، قفيزين بدرهم، ثم بلغ أجل الدراهم فحلت دراهمه، فقال صاحب الدراهم: عندي بر إن تشأ أن تأخذ بسعر ما يبيع به اليوم فعلت، وإن تشأ أن أبيع دراهمك فعلت. إن ذلك لا بأس به، إنما هي دراهم، وله أن يأخذ بدراهمه ما شاء من العروض، وإن باعه خمسة أقفزة وزيادة فلا بأس.

20.

Q: A man bought one hundred sheep on condition that the seller gives the buyer exactly the same amount from any flock that he wants. Later, though, it occurs to him to sell the sheep.

A: Concerning the amount of sheep, it is lawful to sell the sheep even before paying the full amount, unless the sheep were purchased on credit. In this case, he should not sell them until he has paid for them in full. However, if it is a direct sale, then there is no objection to this. *Nasī'a* is only disliked because it is feared that the price might become less than the proper one. Nevertheless, if he says “count the one hundred which I bought from you”, then it is lawful.

وأما ما ذكرت من رجل اشترى مائة من الشياه عددا، على الرجل أن يوفيهها عددا من أي قطيع شاء، تعلم بعينها، ثم عرض له أن يقبض، فأما العدد فلا بأس ببيعه قبل أن يقبض، إلا أن تكون الغنم قد كانت بنسيئة إلى أجل، فلا يبيعها حتى يقبضها. وأما ما كان من بيع حاضر فلا بأس به، إنما يكره النسيئة من أجل نقصانها، وأما أن يقول عد لفلان المائة التي اشتريت منك فلا بأس بذلك.

21.

Q: A man slept with two female slaves without performing a complete bath [*al-ḡusl*] in between.

A: This is lawful as long as he did not have sex with both of them at the same time. He may have sex with one of his female slaves in a house, then send her out, and summon the next one.

وأما ما ذكرت من رجل يجامع جاريتين في جنابة واحدة، فإن ذلك لا بأس به ما لم يجمع بينهما، فأما أن يجامع رجل جاريتيه /في بيت ثم يخرجها، ثم يرسل إلى الأخرى؛ فذلك لا بأس به.

22.

Q: While a woman was performing her post-menstrual *al-ḡusl*, and she had washed her genitals and her head but not her entire body, her husband came and had sex with her.

A: This is unlawful to have sex with this woman.

وأما الذي ذكرت من رجل أتى امرأته وهي في المستحم تغتسل من الحيض، قد غسلت فرجها ولم تفض الماء على سائر جسدها، وقد غسلت رأسها؛ فتلك لا تصلح مجامعتها.

23.

Q: Would you please tell us about the legalities of sex in bed?

A: Vaginal sex is lawful regardless of the position taken by the couples. Anal sex is unlawful. Before having sex, the man needs to make a short vocation including “*bismillāh*” – in the name of Allāh.

وأما ما ذكرت من أن أبين لك شأن الجماعه، وفرج المرأة حيث أوتي وكيف صنع الرجل فلا بأس به، والدبر لا يصلح، واذكر اسم الله على الجماعه.

24.

Q: A person sleeps after a sexual intercourse without performing *al-ḡusl* planning to have another sexual intercourse.

A: He should wash his penis and perform ablution. However, if he does not intend to have sex with her at night he should perform *al-ḡusl*.

وأما يبببب الرجل جنباً، على أن يعاود امرأته، فليغسل فرجه وليتطهر طهوره للصلاة، وإن لم يرد أن يعاود فليغتسل.

25.

Q: What about *al-ḡusl*?

A: First, you wash your penis. Then, you wash your hands without submerging them in the water container. After that, you pour water over your entire body.

والغسل أن يبدأ بمذاكره، فيغسلها ثم يغسل كفيه من غير أن يدخلها في الماء، ثم تفيض الماء عليك.

26.

Q: After performing *al-ğusl*, does one need to perform ablution so as to pray?

A: Performing *al-ğusl* is enough.

وأما ما ذكرت هل يتطهر الرجل بعد ذلك للصلاة فكفى بطهره على مغتسله طهورا.

27.

Q: How much water does one need to perform *al-ğusl*?

A: For *al-ğusl* a *tawr* of water is enough. You need to wash your head and beard thoroughly.

Q: When a person is *al-ğunub*, does that affect their clothes or bed in terms of purity?

A: You need not to sprinkle water on your clothes or your bed sheet. They are deemed pure.

وأما ما ذكرت من الماء ما يغسل الرجل، فإنه يغسله ملء التور ليس بصغير فإذا اغتسلت فذلك الرأس واللحية، وأما نضح الثوب فإن الثوب لا يجنب ولا الفراش.

28.

Q: If you get *al-ğunub*, can you touch your clothes?

A: If you have removed *nağāsa* from your penis you need to wash your hands first before touching your garments. It is desirable for a man to wash his penis after having sex before touching any piece of clothing.

وأما ما ذكرت هل يصلح أن تمس ثوبك بعد ذلك، فإن وليت أن تمسح ذكرك فلا تمس ثوبك حتى تغسل كفيك، واعلم أنه يستحب أن يغسل الرجل ذكره حين يقوم قبل أن يمسه شيء من ثيابه.

29.

Q: What is the best time for voluntary Night Prayers?

A: The best voluntary Night Prayer is the one performed after your initial sleep. It is reported that in that stage of night, Allāh sends an angel that calls out: “He who invokes will be answered. He who

seeks forgiveness, shall be forgiven. He who repents, from him shall the repentance be accepted.”

وأما ما ذكرت أن أبين لك أفضل صلوات الليل، فإنه بلغني أن أفضلها أول نومة، بلغنا أن أول هجعة للناس ينادي مناد: من يدعو فيستجاب له، ومن يستغفر فيغفر له، ومن يتب فيتب عليه.

30.

Q: A man was late joining a congregational prayer. Before he arrived, the Imām had finished the first *rak'a*.

A: After finishing the second *rak'a*, he shall make up for the one he missed.

وأما ما ذكرت من رجل سبقه الإمام بركعة وأدرك الأخرى؛ فليتم ما سبق به إلى ما أدرك.

31.

The Friday congregational prayer has two *rak'as*. However, if he misses them with the Imām, he shall perform the Noon Prayer (four *rak'as*).

وأما صلاة الجمعة مع الإمام ركعتان، فإن لم يدرك شيئاً من ذلك مع الإمام؛ فليتم صلاته الأولى.

32.

Friday congregational prayer is demanded by Allāh. I have been informed that Allāh sends angels to mosques on Friday and orders them to stand at the gates of every mosque so as to take down the names of every Muslim who comes to perform. I have been informed that Ibn Abbas said that those angels keep doing that until the Imām gets up for the prayer.

واعلم أن الجمعة عزيمة من الله على المؤمنين، وأنه بلغنا: أن الكتاب يكتبون يوم الجمعة على أبواب المسجد حتى يخرج الإمام فيرفعون الكتاب. وقد تحدث الناس أن في الجمعة ساعة لا يدعو فيها مؤمن ربه إلا استجاب له. وقد ذكر لنا عن ابن عباس أن ذلك حين يقوم الإمام إلى الصلاة، وذلك أشغل ما يكون عند صفوفهم.

33.

Q: A man lent another man some cloaks and took two garments as a guarantee.

A: The lender may not claim for anything other than the cloaks that are the same as the ones he lent to the borrower.

وأما الذي ذكرت من رجل أسلف بردا بثوبين، فإن يرد غير البرود؛ فإن ذلك لا يصلح.

34.

Q: Grain is sold for wheat. The price is to be paid later.

A: This is impermissible.

وأما الذي ذكرت من شأن الحبوب نوعا يباع شيء منها نسيئة ببر؛ فإن ذلك لا يصلح.

35.

Q: On Friday a man arrived at the mosque late while the Imām was about to commence praying. That man was impure and he had no access to water. If he tried to find water, he would miss the prayer with the Imām. May he resort to *tayammum* (dry ablution)?

A: No, he may not. How can I afford to allow him to resort to dry ablution whereas he lives in a town where water can be found? Dry ablution is only permissible in the desert when there is no water. That man needs to look for water to perform ablution. Since he will miss the Friday Prayer, he shall pray the Noon Prayer instead. By Allāh, I cannot afford to permit him to perform prayer without wet ablution. Why do some people come to the mosque to perform the Friday Prayer without having first performed their wet ablution?

وأما الذي ذكرت من رجل أدرك الإمام يوم الجمعة، وقد تقدم إلى الصلاة، وليس الرجل على طهر ولا ماء، كونه إن طلب الماء فانتته الصلاة مع الإمام، هل له أن يتيمم بالصعيد ويصلي؟ فلا لعمرى الصعيد في قرية فيها الماء، إنما الصعيد في الفلوات، حيث ليس الماء، فليطلب الماء ثم يصلي الأولى، فلا والله ما أنا بمرخص له في الصعيد وهو غير متوض، وما بال الرجل يأتي الجمعة وهو غير متوض.

36.

Q: A man had committed adultery with a woman while they were non-believers. Are they allowed to marry each other after they embraced Islam?

A: ‘Abdallāh ibn ‘Abbās terms this as “a relationship that began as an act of adultery and eventually became a marriage!”

وأما الذي ذكرت من رجل أصاب من امرأة زنى في شركهما، ثم أسلما بعد ذلك هل يصلح له أن يتزوجها يجدد لها، فذلك الذي كان يقول ابن عباس رضي الله عنه: أوله سفاح وآخره نكاح.

37.

Q: A man performed *al-‘umra* (minor pilgrimage), then went home. Later, he decided to perform *al-ḥağğ* (pilgrimage). May he perform *al-ḥağğ tamattu‘*?

A: If he goes (to *al-ḥağğ*) on the day of ‘*arafa* he shall not perform *tamattu‘*. If he goes earlier, I do not recommend him to stay for days in Makka in the state of *iḥrām*, thus enabling him to perform *tamattu‘*. However, *al-‘umra* can only be performed once a year.

وأما الذي ذكرت من رجل اعتمر عمرة ثابتة، ثم رجع إلى أهله فقضى له أن يحج، هل له أن يتمتع؟ فإن قدم من يوم عرفة فلا عليه أن يتمتع، فإن قدم قبل ذلك فإوانف؛ فإنني أكره أن يقيم بمكة أياما محرمة فليتمتع، على أنه العمرة في السنة واحدة.

38.

Q: A man has become *al-ğunub* and has little water to perform *al-ğusl*. He is far away from any source of water. If he goes to fetch more water for his *al-ğusl*, he may miss the prayer.

A: If so, and that man fears suffering from thirst if he uses the water he has for *al-ğusl*, then he may resort to *tayammum* (dry ablution). If he does not fear suffering from thirst if he uses the water he has for *al-ğusl*, but the water he has is not enough, he may do as Muslims used to do in the past: he should wash his genitals, perform ablution, and pray. Afterwards, whenever he has access to water he has to perform his *al-ğusl* as usual.

وأما الذي ذكرت من رجل كانت به جنابة ولم يجد إلا ماء يسيرا، وقد تباعد منه الماء، وقد أدركته الصلاة وخاف أن تفوته، فإني أخبرك أن الرجل إذا كان معه ماء يسير كانت له رخصة إن خاف ظمأ فليتييم صعيدا كما أمره الله، وإن لم يخف ظمأ وعنده ما لم يبلغ غسله أجمع فإن المسلمين كانوا قبلنا، كان الرجل يغسل فرجه ثم يتطهر طهوره للصلاة ثم يصلي صلاته، فإذا بلغ الماء فليغتسل.

39.

Q: A man performed *tayammum* (dry ablution) and prayed. Later, he found a group of people at prayer and joined them.

A: I recommend him not to resort to dry ablution unless he fears that he would miss the prayer.

وأما ما ذكرت من رجل يمم الصعيد ثم صلى ثم أدرك الإمام ولم تفته الصلاة، فإن ذلك أحب إلي ألا يتييم الصعيد حتى يخاف أن تفوته الصلاة قبل أن يدرك الماء.

40.

Q: A man performed dry ablution (as an alternative of *al-ğusl*) and prayed. Later, during the term of such prayer he found water. Is he required to perform wet ablution and repeat that prayer?

A: He does not have to repeat that prayer as it is valid. However, I recommend him to perform *al-ğusl* and repeat that prayer as long as its time has not elapsed.

وأما الذي ذكرت هل يعيد الرجل الصلاة إذا أدرك الماء ولم تفته الصلاة، فإن شاء أن يغتسل ثم يصلي فليفعل، فإن اتكل على صلاته فقد صلى، وأحب ذلك إلي أن /يغتسل، ثم يصلي إن لم يكن فاته حين /الصلاة.

41.

Q: If a man gets *al-ğunub* and does not have enough water to perform *al-ğusl*, can he wash his head in a container and then use the same water to wash his body?

A: That is not recommended. The same applies to a menstruating woman when performing *al-ğusl*. However, it would not be un-recommendable if the water in question is running.

وأما الذي ذكرت من قلة الماء مع الرجل لا يبلغ طهوره أجمع، هل له أن يغسل رأسه في إناء ثم يعيده على جسده؟ فإني أخبرك أنه يكره أن يعيد الرجل على جسده ما يغسل به رأسه من جنابته، والطامث مثل ذلك يكره لها نحو ذلك، إلا ماء جارياً فقد يصنع ذلك.

42.

Q: A man touched his genitals while performing prayers.

A: This is un-recommendable, unless he has a piece of his clothes in between. He needs to repeat his ablution and prayer. Nonetheless, it is permissible to touch armpits while performing prayer.

وأما ما ذكرت من رجل يمس مذاكره وهو يصلي؟ فإنه يكره ذلك إلا من وراء الثوب، فلينصرف وليتوضأ وليعد صلاته، وأما مس الإبطين فلا بأس بذلك، أن يمسهما الرجل وهو يصلي.

43.

Q: A man prayed the Evening, the Night and the Morning Prayers without reciting from the Qur'ān.

A: I recommend that he repeat his prayer as he had departed from the sunna unless he is an illiterate person who cannot read. Allāh does not impose upon any soul a duty which exceeds its ability.

وأما الذي ذكرت من رجل يصلي المغرب والعشاء والصبح، لم يقرأ فيهن بشيء من قراءة، فإن أحب ذلك إلي أن يعيد صلاته فيقرأ فيها، فإنه قد ترك السنة فيها، إلا أن يكون رجلاً أمياً لا يقرأ واعتم؛ فإن الله لا يكلف نفساً إلا وسعها.

44.

Q: An Imām missed *ar-rukū'* (kneeling) in a congregational prayer. The people he led followed him.

A: Those people need to re-perform that prayer as that act contradicts with sunna. Failure to perform kneeling, *suğūd*, recitation of some Quranic verses, or sitting during one's prayer contradicts with sunna and renders one's prayer null and void.

وأما ما ذكرت من إمام قوم لم يركع في صلاة مكتوبة فاتبعه الناس ولم يركعوا، فإن أولئك أحب إلي أن يعيدوا ما خالفوا فيه السنة، فإن من ترك ركوعا أو سجودا أو قراءة أو قعودا لا يستقيم للناس أمر يخالفون فيه السنة.

45.

Q: A man borrowed approximately fifty *karrs* of wheat. When the debt became due, he gave the lender twenty-five *karrs* of wheat and paid him the price of the remaining amount.

A: 'Ikrima, the bondman of 'Abdallāh ibn 'Abbās, reported that the latter held that the lender must be given back the entire quantity he lent to the borrower or the entire price thereof. I believe that the transaction you asked about is unlawful. However, I will tell you about a lawful version. The lender lends the borrower a quantity of wheat that is estimated at a fixed price. When the lender redeems his debt he may take a lesser amount. This is permissible. It is un-recommendable for him to redeem part of his due debt in-kind (as wheat in this case) and the other part in cash. Allāh rewards people upon their intentions.

وأما الذي ذكرت من رجل تسلف في البر خمسين كرا أو فوق ذلك أو دونه، ثم يبلغ الأجل فيأخذ خمسة وعشرين كرا، ويأخذ ببقية الطعام رأس ماله، فإني أخبرك أن عكرمة فتى ابن عباس يذكر عن ابن عباس أن يأخذ طعامه كله أو دراهمه. وأما أنا لا أبا إلا رجلا تسلف في كر دراهم معلومة، ثم أعطى للأكرار كل كر دراهم معلومة، فإذا بلغ الأجل قبض طائفة وتجاوز عن طائفة، فإن الرجل يتجاوز عن ما يشاء من ماله ويأخذ ما يشاء فلا بأس، والله جاز العباد بنيتهم فليأخذ، وإنما يكره أن يأخذ طائفة برا وطائفة تقوم، فتأخذ قيمة البر دراهم، وأما أن يأخذ طائفة ويتجاوز عن طائفة فلا بأس بذلك، وأما أن يكون أجمل أكرارا بدراهم معلومة جملة فذلك الذي يكره، والله جاز العباد بنيتهم.

46.

Q: If a woman plays the role of a pander, must she be subjected to the same punishment of adultery? She has never practised adultery herself. May a man marry her if she repents?

A: The three parties (the man, the woman, and the pander) must be subjected to the same punishment of adultery. It is un-recommendable for a Muslim to marry that pander after she repents.

وأما الذي ذكرت من امرأة تجمع بين الرجل والمرأة حراما بمنزلة واحدة هي في الحد أم لا؟ وهل يحل نكاحها إذا هي تابت من ذلك ولم <تقرب زنى>، أما الثلاثة فهم في الحدود سواء إذا عرف منهم ذلك، وأما نكاحها فأكرهه لكل مسلم.

47.

Q: A woman from Khorasan had a husband. Then she came out of Khorasan to a land of war, but the subjects there were Muslims. There she got married again. After that, she returned to Khorasan and found that her first husband had passed away. May a Muslim marry her if she repents?

A: That is unlawful. Do not send me any questions similar to this one.

وأما الذي ذكرت من امرأة كانت من أرض خراسان لها زوج، ثم خرجت من أرض خراسان إلى أرض حرب لأهل القبلة، وهم أهل قبلة، فتزوجت وكان ذلك دينهم، ثم رجعت إلى خراسان وقد توفي زوجها الأول، وهل يصلح لرجل مسلم أن يتزوجها إذا هي تابت؟ فذلك حرام على كل مسلم، ومثل هذا من المسألة لا يعجبني أن تكتب إلي به.

48.

Q: What about getting permission before entering pavilions and tents?

A: Pavilions and tents are deemed houses so one needs to get a permission and greet its people before one enters.

وأما الذي ذكرت من الإذن والتسليم في الفساطيط والأخبية، فهي بيوت، فسلموا على أهلها واستأذنوا.

49.

Q: After divorce, the ex-couple agreed on a two-year suckling of their baby. May the ex-husband require his ex-wife to refrain from re-marriage throughout that term? What if she re-marries during such term, gets pregnant, and fails to continue breastfeeding the baby she got from her ex-husband?

A: Such requirement is detestable. If she accepts that condition and later fails to satisfy it, she cannot be deemed to have committed a sin. She shall be paid for the breastfeeding she provided before the re-marriage. As for the breastfeeding she provided after the re-marriage, her ex-husband has the choice: he may pay her for it or pay her nothing. However, the woman may refuse to get paid for that breastfeeding provided that she is not pregnant.

وأما ما ذكرت من رجل طلق امرأته، ثم تراضيا على الرضاع حولين كاملين، هل يصلح له أن يشترط عليها ألا تتزوج فيهما؟ وقولك: فإن تزوجت وحملت، ثم فصلت الولد قبل أن تتم ذلك؛ فإن الشرط عليها قبيح. وإن شرطت ثم تزوجت لم ترتكب حراما، وما كان من رضاع قبل التزويج حسب، وما كان بعد التزويج، فإن شاء والد الولد لم يحسبه، إن سخوا يقوم، وإن سخت المرأة نفسا بما أرضعت، ما لم تحمل، فذلك حسن لمن قبله.

50.

Q: During a woman's waiting period (*al-idda*), she vowed to a man to marry none but him.

A: This agreement is void. If they should marry after the expiration of her waiting period, they must be separated. According to 'Abdallāh ibn 'Abbās, if the parties discard such agreement and observe a waiting period similar to that of *al-idda*, they may get married to each other. However, I recommend them not to marry each other so as to avoid confusion and doubts.

وأما ما ذكرت من الميثاق قبل انقضاء العدة، لا أتزوج غيرك، فقد عزمنا العقد، فذلك نكاح لا ينبغي، فإن نكحها بعد انقضاء العدة فرق بينهما، ولم يعجبني مراجعتها، وأن لا يكون تزوجها فوالله لتركها أحب إلي. وكان ابن عباس يقول: إن تركا الميثاق، ومضت لها في غير عدة نحو العدة الأولى؛ فلا بأس بنكاحها. وترك اللبس أحب إلي.

51.

Q: A man beat another man with a sword or a stick. Then the victim's wound healed. Accordingly, the victim was given blood money for the offence. Afterwards the wound re-opened and it was discovered that the first healing was incomplete. Eventually the victim died.

A: ‘Abdallāh ibn ‘Abbās reported that ‘Umar ibn al-Ḥattāb ruled that, two years after the incident, the offender shall pay a full blood money less the blood money originally paid for the wound.

وأما ما ذكرت من رجل ضرب رجلاً بسيف أو بعصى، ثم برئ المجرع فأعطي دية الجرح، ثم بعد ذلك بغى وانتقض الجرح، وكان برؤه الأول على عوار، فمات الرجل، فإن ابن عباس كان يقول: قضى عمر بن الخطاب، رضي الله عنه، في ذلك بعد حولين أن الدية كما نقص من ذلك ما أخذ من جرحه، يقول: إنما أوتي من ذلك.

52.

Q: A religiously illiterate man played the role of Imām in prayers. He only recited *al-Fātiḥa* and did not even recite it in a proper way. Is that prayer valid, or do they need to repeat such prayer?

A: He needs to re-perform that prayer because his action contradicts with sunna, and any action that contradicts with sunna is null and void.

وأما ما ذكرت من قوم أمهم رجل أمي في صلاة فيها قراءة، فلم يقرأ إلا أم الكتاب لم يقمها، هل تمت صلاة من صلى معه أم يعيد صلاته؟ الجواب في ذلك: أنه يعيد صلاته، فإنه قد خالف السنة، وما كان من أمر خولف فيه السنة نقض.

53.

Q: A drunken man played the role of Imām in prayer.

A: The people who prayed with him need to repeat their prayer. How did it come to pass that a drunken or religiously illiterate man served the role of an Imām in prayer? They may not allow any drunken or religiously illiterate man to lead them in prayer.

وأما قولك أمهم سكران فخلط قراءته، فليعيدوا صلاتهم، فبئس الإمام / الأمي والسكران، فلا يؤمهم واحد من ذلك، ولا يأتوا بهم.

54a.

Q: A man owes a lot of money to another man. The debtor does not know whether the creditor is dead or alive. Does the debtor need to pay *zakāt* for such debt?

A: I object to a man paying *zakāt* on behalf of another man in a debt. He does not need to pay *zakāt* for such debt.

وأما ما ذكرت من رجل عليه مال كثير لا يدري ما فعل صاحبه أحي هو أم ميت، هل على ماله زكاة؟ فإنني لا أحب أن يزكي رجل مال رجل هو عليه دين.

54b.

Q: So, what does he do with it?

A: He should keep it until the creditor appears. Moreover, he needs to keep looking for the creditor by asking the creditor's family and tribe. To my best knowledge, he does not need to donate such money to charity and pay the same to the person who claims for the debt.

وأما قولك: ما يصنع به؟ فليمسكه حتى يأتي صاحبه ولا يغفل عن المسألة عن أهله وقومه، فإنني قد علمت أنه لا يجب أن يتصدق به، ثم يقومه إن جاء له طالب.

55.

Q: What is to do when a man accuses his female slave of adultery?

A: 'Abdallāh ibn 'Abbās adopted a strict opinion in this regard. He held that such a woman is *ḥarām* for him.

وأما ما ذكرت من رجل رمى أم ولد له وليدة، فإن ابن عباس كان يقول في ذلك قولاً شديداً، يقول: تحرم عليه.

56.

Q: Two men jointly bought a female slave that claimed to be a virgin. Then, one of them had sex with her and she became pregnant. Then the other man objected to such an act.

A: Due to such an act, the first man is deemed to have committed adultery. Therefore, if he was married before such act, he shall be stoned. The price of the female slave shall be estimated as of the time she was still a virgin. Half of such price shall be taken from the first man. If she gives birth to a baby, the price of such baby shall be estimated. Half of such price shall be given to the second man.

وأما الذي ذكرت من رجلين اشتركا في جارية، فوقع عليها أحدهما فحملت منه، فقال الآخر: جاريتي عذراء، وقعت عليها فافتضضتها، وكانت عذرتها تغلبها، فمضى ذلك حتى استبان حملها، فأما الذي وقع عليها فهو زان، /إن كان محصناً رجم، ووقفت الجارية يوم هي عذراء

بأعلى قيمتها فأخذ من مال الذي وقع عليها نصف ثمنها، فإذا ولدت قوم ابنها، ثم أخذ شريكه نصف ثمنه.

57.

Q: A woman, who never performed *al-ḥağğ* died after she had made a testament to the effect that a person should perform *al-ḥağğ* on her behalf, using her money.

A: Well done! Let her relatives send someone who is in need of such money to perform such *al-ḥağğ*. That person may be chosen from her relatives.

وأما الذي ذكرت من الذي تسألني عنه: أن امرأة توفيت ولم تحج قط، فأوصت أن يحج عنها إنسان من مالها، فقد أحسنت، فأحجوا عنها من هو فقير إلى ذلك، وإن كان من أهل قرابتها.

58.

Q: After getting married to a free woman, a man got married to a female slave.

A: Shame on him! Such a female slave shall be taken away from him. However, if the man objects, then he may keep her but the free woman shall have the upper hand.

وأما الذي ذكرت من رجل تزوج حرة ثم تزوج عليها بعد ذلك أمة، فبئس ما صنع وتززع الأمة، فإن كره ذلك؛ فالحرة على رأس أمرها.

59.

Q: A man made his male slave get married to his female slave. Later, the master decided to take her as a concubine.

A: The slave man must divorce her and ask if her waiting period (*al-‘idda*) has expired. Then the master can take her as a concubine.

وأما ما ذكرت من رجل يزوج عبده أمة، ثم يبدأ له أن يتسراها، فليطلق الرجل عن عبده ثم تعتد من طلاقه، فإذا انقضت العدة /فليتخذها إن شاء.

60.

Q: A male and female slave got married. Then, the male slave was sold and taken away to another country without divorcing her. Before such sale, his master effected a divorce.

A: The new master needs to look for the old master. Otherwise, he may not enter into relations with her. Her first marriage remains valid and effective as it was legally consummated.

وسألت: إن بيع زوجها فذهب به إلى أرض أخرى ولم يطلق، فطلق عنه مولاه الذي باعه قبل البيع، فإن لم يجد مولاه الذي باعه فلا ينبغي له أن يمسه ولها زوج، نكح بشهود وفريضة. وأما رجل ينكح وليدته عند قوم آخرين فلا تحل له حتى يطلقها سيده.

61.

Q: While a man was riding an animal, it hit a person with its hoof and killed him.

A: The rider shall not be punished by capital punishment. The owner of the animal shall bear the due compensation (*diya*) according to the wounds.

وأما ما ذكرت من دابة ضربت بيدها إنسانا وعليها صاحبها فليس عليه قصاص، ولكن الدية على صاحب الدابة ما بلغ الجرح والنفس .

62.

Q: After conquering an enemy country and taking slaves, among them is a married couple. What if such a couple prays?

A: The master of such a couple, may either acknowledge their marriage or separate them. If such separation comes after their prayer, the *al-idda* (waiting period) shall start on the date on which they are separated. If separation comes before their prayer, no divorce is needed. In the latter case, her womb must be proved to be empty.

وأما ما ذكرت من أنكم تسبون أهل أرض، ثم يصير الرجل وامرأته لأحدكم، فسألت: كيف يصنعون بنكاحها إذا صليا جميعا؟ فإذا شاء مولاها أن يقر نكاحها على النكاح الأول فليفعل، وإن شاء فرق بينهما، فإن فرق بينهما وقد اجتمعا في أمر الصلاة على نكاحها الأول فإن العدة من فرقتهما، وإن كانت الفرقة قبل الصلاة فلا طلاق عليها، ويستتطف ظهريهما.

63.

Q: A man got married to a girl that had never menstruated. After consummation, he divorced her. Ten days before the end of her waiting period, she menstruated.

A: She needs to calculate three waiting periods as from the day she first menstruated. The period preceding her first day of menstruation shall not be taken into account.

وأما الذي ذكرت من رجل تزوج جارية لم تحض، فطلقها بعد أن دخل بها، فلم تحض حتى كان في آخر عدتها بعشرة أيام؛ فإنها تستأنف ثلاث حيض من يوم حاضت، ولا تعد بشيء مما خلا.

64.

Q: What if you hire a man to cultivate your land with palm trees and pay him with a third or a half of the resulting proceeds?

A: This is un-recommendable. You'd do better to hire a man to work on your land or palm trees for an agreed fixed remuneration.

وأما ما ذكرت من الرجل تدفع إليه الأرض يعمرها نخلا بثلث أو نصف، فذلك ما يكره منه، ولكن استأجر رجلا بأجر معلوم فليقم على أرضك ونخلك.

65.

Q: What if you hire a person to look after your wheat crop and livestock, and to cultivate your land and pay him with a third or a quarter of the resulting proceeds?

A: This is not recommended, either. You need to hire someone at a fixed remuneration.

وأما ما ذكرت من أنك تدفع على رجل برا وبقرا يعمل في أرضك ويزرع فيها وله الثلث أو الربع، فذلك أيضا مما يكره إلا رجلا تعلم له أجره.

66.

Q: What if you let a man be your partner in the proceeds of your own land considering that he spends as much as you do on the land as much as you do and performs a portion of the work needed therein?

A: That is alright. Partners' contributions may vary. You may not impose conditions on his work.

وأما الذي ذكرت من رجل تشركه في أرضك ينفق نحو ما تنفق، زعمت أنه يكفيك طائفة من عمله، ويعينك غلامك أحيانا ولا تتفضل عليه، فلا بأس بذلك، وقد يشترك الشريكان فيكونان أحدهما أجزى من الآخر فلا يضر ذلك، ولا تشتترط عليه شيئا في عمله.

67.

Q: A man receives money from the State's Treasury. May I turn that money into a loan?

A: That is not recommended. With the passage of time that will be a form of *ribā*.

وأما ما ذكرت من رجل يؤخذ في بيت المال فتتقبل له وتجعله عليه سلفا، فذلك أكرهه لك، أن ينقد الرجل فينقد عن نفسه، فأما قبالة يقضي لها زمانا ولا ينقدها فذلك ربا.

68.

Q: What is the situation if a civil worker is well treated by big businessmen, and what about their feeding of his riding animal?

A: If they do so out of fear of his authority, that will be impermissible. Giving food to his riding animal is treated in the same manner. You should avoid suspicion!

وأما ما ذكرت من رجل بعث على عمل فتنزله دهاقين الأرض، فإن يكن ذلك من هيبة له فلا يصلح، وأحب ذلك إليّ ألا يرزؤن مرزئة تضرهم، فأما علف الدابة إذا نزل بهم فإنما ذلك بمنزلة سواء، فدع الريبة وخذ بالعارف.

69.

Q: In our country, the man pays a dowry that comprises money and palm trees, and each palm tree has a particular recognized value.

A: If the in-kind portion is defined, it shall be acceptable.

أما الذي ذكرت من أنكم تنكحون النساء على مهور تسمون بها مالا ونخلا وتزعمون أن لكل نخل ثمنا معلوما فأما [ما فرضتم] [دراهم علمتموها نخلا على سنة أرضكم تراضيتم على ذلك فلا بأس بذلك، والشرط أملك.

70.

Q: What if the in-kind-portion is not defined?

A: However, if the cash and in-kind portions of such dowry are not defined, the woman shall have the choice of defining such portions. In this regard, she may not be forced to do something against her will. The elders of the two families conducting the marriage may not enter into any agreements without her consent.

وأما إذا سميتم دراهم ولم تتراضوا فيها بأمر معلوم، فإن للمرأة الخيار من ذلك إذا شاءت دراهم وإن شاءت نخلا، وليس لها أن تجبر على غير ما تشتهي من ذلك، وإن تراضى الأولياء بأمر دونها فليس لهم ذلك بعد النكاح والفريضة، لأنه لا أمر للأولياء بعد الفريضة، والأمر في ذلك للمرأة.

71.

Q: What if a man proposes to a woman saying that the dowry is one thousand darāhim(or better Dirham?) (or any other amount). Then, upon consummation, he claims that such amount will not be in cash but goods, while he does not know the price of such items.

A: It all depends on the woman's consent. She may require him to pay her a cash dowry corresponding to the prevailing custom of her tribe. The woman may not be forced to sell her portion in his property until she receives her entire dowry unless she chooses to waive any part thereof.

وأما قولك إن الرجل يقول: أتزوج على ألف درهم أو ما شاء الله من تسمية الدراهم، ثم يقول عند النكاح: إن ذلك في ضاحي وأرضي ونخلي، لا يعلم الثمن، فإن للمرأة رضاها من ذلك، إلا أن تقول: أعطني بها مالا نحو الذي يؤخذ من قومي في فريضة النكاح، فما لم يعلم من ذلك فلا تكره المرأة على بيع، والذي لها في ماله حتى تستوفي دراهمها إلا أن تشاء أن تتجاوز عما شاءت منه.

72.

Q: How to deal with the exchange of darāhim (Dirham) between two parties?

A: The exchange can be made, but it should be final and done on the spot.

وأما ما ذكرت من الصرف تصرفون / الدراهم، ثم لم يشترط لكم، ما لم يجد لكم فردوه ببذل لكم، فلا أحب ذلك، باينوهم عند ذلك، وافصلوا ما بينكم، فإن لم تبصروا الدراهم فاستوروها، فما لم تنقد فيه أبصاركم ولا بصر من تستوروها له فلا يصلح رده، وإن كان غير طائل لا ينفق عنكم.

73.

Q: Some free people are sold for a cheap price.

A: Both the buyer and the seller are alike in this regard. No Muslim may trade in free people.

وأما الذي ذكرت من اشتراء الأحرار يبتاعون برخص فإن المشتري والبائع سواء /، فذلك حرام على المؤمنين، فتنزه عما أراك، وانتقل منه إلى أصابك، ودع الربية لأهلها.

74.

Q: In your country, people debated over a woman that told a man that she breastfed both of his two wives.

A: If this woman is to be trusted, they have to believe her, and they must be separated because he unknowingly married two sisters at the same time, and this is one of the most forbidden matters. He may not re-marry any one of them. However, he may marry any other marriageable woman.

وأما الذي ذكرت من الذي تشاجر فيه ناس ممن قبلكم من امرأة أخبرت رجلا عن امرأتين له أنهما أرضعتها جميعا، فإن تكن ممن لا تتهم صدقت وفرق بينهم، لأنه جمع بين الأختين، ذلك / من أكبر التحريم والحرام، ولا ينبغي أن يراجع واحدة منهما ما بقي، وله فيما سواهما مندوحة.

75.

Q: A man bought a female slave and had sex with her. Later, he learned that his father previously had sex with her.

A: He needs to sell that female slave as he may not have sex with her.

وأما ما ذكرت من رجل وطئ جارية كان أبوه وطئها، لا علم له بذلك، فليبعها فإنه لا تحل له مجامعتها.

76.

Q: After having sex with one of his female slave, a man sold her. Three days later, he had sex with her sister, being one of his female slaves.

A: He may not have sex with both sisters even if they are his slaves. It is recommended that he wait until a period similar to a free woman's 'idda expires. After that expiration, he may have sex with the other sister.

وأما ما ذكرت من رجل باع جارية / قد وطئها، وعنده أخت لها فوطئها، وكان بين ذلك ثلاثة أيام، فإن أعجب ذلك إلي أن لا يطأها وقد جمع بينهما ولا يصلح جمع الأختين، وإن كانتا مماليك مما ملكت اليمين، والعدة في نفس منها على الرجل لا بأس به، فإنني أزعم أن ذلك كنحو الحرة إذا طلقت، وإنما أخذ في ذلك بالثقة، وأترك الريبة لأهلها، فإن أعجبه أن يعتزلها كقدر ما لو كان على الأول عدة انقطعت أن يجامعها فليفعل.

77.

Q: You estimate the amount of dates borne by palm trees upon which zakāt is due and force people to rent out their farms, even if they depend on them?

A: You are not allowed to do so. This is very risky. However, you have no choice but to face that situation. On the other hand do your best to avoid that, and Allāh will guide you through that.

وأما الذي كتبت تسألني عن خرص النخل على أربابها، ومن إكراهك أناسا على قبالة أرضيهم بها سكان، فذلك لا يحل أكله، ولكنك من ذلك كراكب الأسد، ولا أخال لك بدا من ذلك. فتنزه ما استطعت مما تكره، فإن الله لا يعمي عليك شيئا من ذلك.

78.

Q: You asked my advice on how to act considering the responsibilities of your office?

A: Financial corruption stems from the ruler's failure to know the details of the transactions made behind his back. There is something missing in the governor's relationship with his subordinates. It is necessary and permissible that the governor benefits from farmers working on State-owned lands. Therefore, the governor

should hold a meeting with the farmers and let each one of them tell him about his capacities and abilities. In the light of that information, the governor should assign each one of them a task that suits him best. Corruption arises with businessmen that administer the land crops and collect the crops on behalf of the State. They collect them and make a considerable amount of money. However, they will deposit very little in the State's Treasury, alleging that they made very little or no profits. Therefore, it is advisable that the governor makes deals directly with the farmers and uses no agents, and that such deals will be in writing. If you take this advice, State revenues will increase.

كتبت إليّ أن أدلك على المخرج من الذي أنت فيه، وتأمرنى أن أبين لك العدل في الذي أنت فيه، ولعمري لو أخذت في ذلك بأمر أهل العدل لوسعت ذلك، فإن كان في ذلك في حاجتك فاجمع أهل أرضك، ثم ادع كل إنسان منهم فاسأله ما يطيق فإنه ليس منهم إنسان إلا كان سيحمل من ذلك أمرا يكون لك فيه كفاية، فإن الدهاقين يأخذون أضعاف ما كانوا متحملين لك، لا يصل من ذلك إلى بيت المال إلا القليل يمسكونه لأنفسهم، ويأخذون الشرط دونهم، وأمور كثيرة تغشاهم، ولا يصل إلى بيت المال منه كثير. فانظر كل إنسان منهم تحمّل لك أمرا فقل: ليس عليك دهقان دوني ولا شرطي، إن تشأ أن أكتب لك صكّا بذلك وتدفع إليّ الذي تحمّلت لي، وإن لم يكن عندك اليوم فتحمله في طلب ذلك، فإذا رفعت إليّ شيئا من ذلك كتبت لك به صكا، فإن الرجل لعله يؤخذ منه ثلاثمائة فلا يصل إلى بيت مالكم منه مائة درهم، تذهب دونكم، ومتى توضع عن صاحب الثلاثمائة مائة وتؤخذ منه مائتا درهم يبقى له ما يعيش به، وتصيب حاجتك، فهذا أمر إن أخذت به أهل أرضك تكون لهم فيه راحة، وأرجو أن تستخرج منهم أمرا يكون أضعاف ما لو حرصت فيه على خراب أموالهم لم تعد ذلك. فأما أمر المسلمين إذا ضربوا الجزية فإنه كان قسمة على الرؤوس، درهمين وجزأين من كل رأس، ثم يتقبل الدهاقين فيقسم ذلك على قدر أهل الأرض وطاقاتهم، فيكون الرجل ينوبه من ذلك مائتان والثلاث ودون ذلك وفوق ذلك، فكان ذلك أمر المسلمين، فجاءت بعد ذلك أمراء جعلوا يقبلون الأراضي قبالات يتقبلها دهاقينها ويتنادون في الزبادات حتى ينتهي بهم الأمر إلى ما رأيت، فانظر أي أمرك أخذت به فعليك بتقوى الله، ولا يكون من رأيك أن ترى أن الله جاعل /هضمك للناس مخرجا.

79.

Q: As for the dates, seeds and fruits yielded by the lands of the Jews and Christians living in Muslim countries, did the Muslim State collect a tax thereon?

A: The Muslim State has never imposed any financial burdens on such people other than the *ġizya*.

وأما الذي كتبت تسألني عنه من الأرتاب والحبوب والثمار هل كان المسلمون يقسمون عليها خراجاً؟ فلا لعمرى ما كان على أموال أهل العهد بعد الفريضة شيء وإن كثروا.

80.

Q: You asked me if you can use charity revenues for *ġizya* purposes?

A: No, you may not. Charity revenues must be used for charity purposes and may not be used as *ġizya*.

وأما الذي ذكرت من أموال المسلمين في أرضك، كتبت تستأمرني في أن تستعين بصدقته في الجزية، فإن ذلك ليس لك، إنما كانت صدقة أموال المسلمين إلى من بعث الصدقة ولا تجعل جزية.

81.

Q: You lent someone a quantity of barley and wheat on condition of being paid off in barley and wheat of the same quality. Later, you came to pay off the loan, using barley and wheat of less quality than the original loan. You refused to receive that. After that, the lender came to pay off the loan using barley and wheat that were of a higher quality than the original loan.

A: That's unobjectionable.

وأما الذي كتبت تسألني عنه أن تسلف من الشعير والبر على أنك من أرض فلان فيوتى به لا ترضاه وإنما لك / ما شرطه، فإن أتى صاحبك بطعام أجود من غير أن تشرط على صاحبك فلا بأس بذلك.

82.

Q: May you sell something which you bought but have not received yet from the seller?

A: I do not recommend this transaction. You need first to receive the purchased item from the seller.

وأما الذي ذكرت من بيعه قبل أن تقبضه فإن ذلك لا يعجبني حتى تكتاله أو تستوفيه.

83.

Q: You mention that your father had a slave girl with whom he had sexual intercourse. She became pregnant as a result of this, and then suffered a miscarriage.

A: Such miscarriages shall be treated as full live births. It is un-recommendable to sell such female slaves and donate the price of such sale. However, I do not render that *ḥarām*. Nonetheless, you may sell her in a place where the people do not know anything about her. You are well aware of those rulers [i.e., their oppression]. We are afraid of them as they search for excuses to impose penalties on us.

وأما الذي ذكرت من وليدة كان أبوك وقع عليها فأسقطت به سقطا فإن السقط بمنزلة التام في ذلك، وما يعجبني أن تأكل ثمنها من غير أن أحرم ذلك، إلا ما قد علمت من أمرها عند الأمر، فأحبّ إن أنت بعته أن تبيعها في أرض لا يعلم بها، فإن أمر الأمراء ما قد علمت، ونحن لهم هائبون يلتمسون علينا العلل.

84.

Q: You asked about what you see after urinating.

A: You just need to wash it off your penis. After that you can perform ablution. You need not perform *al-ḡusl*. That substance is different from semen, the discharge of which entails performing *al-ḡusl* when it comes out of your penis.

ثم كتبت إليّ تسألني عن هذا الذي تراه بعد البول، فاغسل منه ذكرك ثم تطهر طهورك لصلاة فصلّ ولا غسل عليك فيه، فإن المدي غير المنى.

85.

Q: You asked about practising '*azl (coitus interruptus)* with your female slave?

A: There is no objection to this. You do not need to blame yourself in any way for this practice.

وأما ما ذكرت من العزل من الخادم فلا بأس به، ولا يقعن في نفسك منه شيء.

86.

Q: What about the evil eye?

A: If any evil eye is inflicted upon you, you need to seek cure and recourse.

وأما ما ذكرت من شأن العين، يسترقى منها ويتعوذ.

87.

Q: You mentioned that some people send you gifts.

A: If they send such gifts hoping to get a reward from you, you cannot do that. You must refuse to accept such gifts. However, if you previously did them a favour without violating your occupational integrity, then you may accept such gifts.

وأما ما ذكرت أنه يهدي إليك أقوام يرجون نفعك ولا تستطيع لهم نفعاً فلا تقبل منهم هدية، فإنهم إنما يهدون لك لذلك، فمتى ما لم تفعل ذلك تصير خيانة، فإنك إنما ائتمنت على ما أنت عليه أمانة، فأما قوما يهدون لك معروفا صنعته لم يضر أمانتك شيئاً فلا بأس بذلك.

88.

Q: You asked me concerning your farmland, water supply, seeds, cows used for ploughing and the tools used for cultivation. You agreed with some people that they work for you on such farmland: they cultivate and irrigate the farmland, gather the yields and harvest them. with no payment condition previously agreed upon between you and them, only relying on their confidence in you and your good manners. When you paid them they were satisfied.

A: This is not objectionable, so you may continue in this fashion.

وكتبت إليّ في شأن المحارثة، إن الأرض والماء والأداة والبقر والبذر، كل ذلك عندك، فيأتيك ناس يطيبون إليك نفساً بعملهم، ولا يشترطون عليك شرطاً، ولا تشتري عليهم إلا الذي يرجونه عندك من الثقة والمعروف وحسن الخلق فيحرثون لك ويحافظون على سقي الحرث وحصاده وجمعه، فإذا فرغوا من الحرث أعطيتهم ما شئت أقللت أو أكثرت، فرضوا بذلك وطابوا به نفساً، فلا أرى عليك بأساً فافعل.

89.

Q: You asked me concerning your crops in several places and the fact that you face difficulties in collecting the harvest.

A: You may ask your men in each place to collect the harvest and you don't have to collect all of it yourself as long as you pay the due *zakāt* for your crops.

وكتبت إليّ أن لك حرثا متفرقا في قرى، فلا يضر إلا تكلف جمعه، ولكن إذا /فرغ أهل كل قرية من حرثك الذي في قرينك فافعل فيه الذي عنك من حق الله الذي فرض، ولا يضررك إلا تجمعه جميعا إذا أعطيت الحق الذي فيه.

90.

Q: You asked me about praying and fasting while you travel to other places to look after your crops?

A: You need to keep praying as a traveller until you return home. While travelling you may fast or postpone your fasting to a later period until you return home. Remember that Allāh intends to make your life easier not harder.

وكتبت إليّ في مسيرك في قرى الحرث كيف صلاتك، فصل ركعتين حتى ترجع إلى دارك، التي فيها قرارك كنت عاملا أو غير عامل، وإذا سرت في رمضان وكنت ميسرا لصوم فصم، فإن كانت بك مشقة وعسر فافطر، حتى ترجع إلى دارك التي فيها قرارك، فإن الله يريد بكم /اليسر ولا يريد بكم العسر.

91.

Q: You wrote to me that you asked for a permission to go to *al-ḥaġġ* which was denied with the argument that you already did *al-ḥaġġ* and *al-ʿumra*?

A: Since you satisfied the requirements of *al-ḥaġġ* and *al-ʿumra*, you need not perform the rite of *Hadī* (animal sacrifice) for the *al-ḥaġġ* for which you requested permission unless you do this as a voluntary act. That act will be rewarded by Allāh the Most Generous.

وكتبت إليّ أنك أردت الإذن في الحج فلم يؤذن لك، وقد كنت حججت قبل ذلك فجمعت عمرة وحجا، فقد قضيت الذي عليك من العمرة والحج والوقوف فلا أرى عليك هديا في الحج الذي استأذنت له إلا أن تتطوع بخير فإن الله شاكر عليم.

92.

Q: You asked me about buying camels for sheep.

A: This is permissible.

وكتبت إليّ أنكم تشترون الإبل بالغنم، فلا أرى بذلك بأساً.

93.

Q: You asked me about an incident where you beat a man accidentally and he died. You contacted his sons so that they could impose the sum for the blood money. They preferred that they waive the payment of such blood money. However, you gave them money to the value of forty young camels.

A: If you are sure that they waived the rest of the blood money out of their own free will and not under compulsion or fear that you may inflict harm on them, then you may accept such waiver. Otherwise, you need to pay them the full blood money.

وكتبت إليّ في رجل ضربته فقتل له أن مات، وكنت أرسلت إلى بنيه أن يفرضوا الدية فكرهوا وأحبوا أن يتصدقوا، فأعطيتهم قيمة أربعين شاة، فإن كنت تعلم أنهم تصدقوا عليك بما بقي من الدية طائعين غير مكرهين وطابوا لك نفساً غير خائفين لعقوبتك ولا لضررك إياهم فاقبل ما تركوا من الدية وإلا فأوفهم ديتهم، فذر ما يريبك إلى ما لا يريبك.

94.

Q: You mentioned that a man divorced his wife after they had been separated by *al-hul'*, claiming that it is allowed by some scholars.

A: Scholars believe that no divorce may be made after *al-hul'* takes place. In *al-hul'*, the husband receives an agreed sum so as to free his wife from the marriage bonds. Once he does that his rights as a husband extinguish, and he loses the right to force her to be his wife again unless she so accepts. In a nutshell, once he receives the agreed amount, his divorce shall have no effect.

فأما الذي ذكرت من الطلاق بعد الخلع، وتزعم أن ذلك نزل ببعض من تشفقون عليه، فإن الفقهاء يقولون لا طلاق لمن خلع، وكذلك ينبغي أنه إذا أعطى المال فقبله فقد اختلعت من أمرها، فليس له فيها أمر، وهي أملك بأمرها فليس بعد قبول المال له فيها مراجعة إلا أن تطيب نفسها، ولو كان طلاق بعد ذلك لا يمضي للمرأة أمراً إلا بذلك لكان له أن يرتجع فيها إذا شاء، ولكن انقطع أمره منها بعد قبول المال، وإنما طلاقه بعد ذلك بمنزلة من طلق ما لا يملك.

95.

Q: (1) Concerning your question about the waiting period following the divorce of a virgin with whom you have not had sexual intercourse, and who menstruates for the first time whilst performing her waiting period and about another woman, for whom the period between menstruation is longer than usual, during her waiting period. Further, you asked about another woman, who does not menstruate, although the time is ripe for her to do so. You wrote to me requesting that I inform you of what I have learned about that, and of my opinion concerning this?

A:

I inform you on the authority of Ibn Abbās, that he said that God made menstruation as a sign of pregnancy. And that the waiting period is as a means of allaying suspicions about women's chastity. And concerning that which he used to say about a girl who menstruates for the first time whilst performing her waiting period, he said that he preferred that she complete the waiting period according to the date of her first menstruation, and not according to the number of months which she had already waited. For it is possible that a woman conceives before menstruating for the first time. Or, she may be pregnant and experience a show of blood during her pregnancy. And that which you judge to be the wiser option is that which he (Ibn 'Abbās) preferred.

And we learnt that 'Alī ibn Abī Tālib used to say that the waiting period should be calculated according to the month in which it was begun and not according to the number of menstruations. And this is for cases when it becomes clear to the people that she is pregnant or not, without any doubt. And I prefer the more reliable option.

And concerning the woman who waits a longer time than usual for her monthly period (during the waiting period), then the matter is as God has decreed. And whether the absence of menstruation is due to bodily circumstances or illness, the absence of pregnancy must still

be confirmed beyond doubt. And God is the best source of forgiveness and there is no objection to this interpretation.

وأما الذي ذكرت من العدة في طلاق البكر قبل أن تطمئن فيدركها الحيض في بعض فرض عدتها الشهر أو اثنين أو عدة المرأة، قد كان أترابها قد يؤسن من المحيض، ثم حاضت بعد فرض عدتها، وأخرى تطول بها حيضتها في عدتها، وأخرى يطول بها قعود عن كتيب أن أبين لك ما بلغني في ذلك وأراه، فإني أخبرك عن .وهي من أجل الحيض /حيضتها إنما جعل الله الحيض علما للحبل، فكان عدة الحيض علما للحبل :ابن عباس أنه كان يقول فأما ما كان .يستبرأ به الحبل، وجعل عدة الشهور للثاني يؤسن من المحيض مخافة الشبهات تستأنف عدة الحيض أعجب :يقول في الجارية يدركها الحيض في بعض عدتها فكان يقول إليّ، لأنه قد تحمل الجارية ولم يعلم لها حيض، وقد تحمل المرأة وهي تحيض في حملها، وما : وبلغنا عما يروي الناس عن علي بن أبي طالب أنه كان يقول.صفا له من الأمر أحب إليه حيض فيما مضى من الشهور، وذلك لو كان يستبين للناس حبل أو غيره لا شبهة فيه، والثقة وإن .بها حيضتها من عادة جرت عليها فالحيض كما قال الله /أحب إليّ، وأما التي تطول كان من حدث داء أو مرض قطع ذلك عنها، فإن استبرأ الحبل لا شك فيه، فإله أولى بالعدر .ولا بأس.

96.

Q: You asked me about a woman who saw blood even after her menstruation stopped?

A: Women differ in their menstrual cycles. A woman's menstruation may cease due to illness, not only due to old age. Some women may get vaginal blood which is not menstrual blood. If it is a matter of common knowledge that she should not be menstruating and if the menstruation was an exceptional instance to which she was not accustomed, then her waiting period shall be calculated according to her status during her marriage. If she menstruated, and if she considered, and if common knowledge also decreed that she was not in a position to give up hope of menstruating, then her waiting period shall be calculated according to the number of times she menstruates.

وأما ما ذكرت من المرأة تحيض بعد الإياس، فإن أهل الحيض يختلف أمرهن، ربما عرض للمرأة انقطاع الحيض من غير كبير إلا ما يعرض من الداء، وربما رأت المرأة الدم من غير محيض، فإن عرف أنها ممن لا ينبغي أن تحيض وكان ذلك من غير عادة تجري عليها في

مستأنف الأمور فعدة الشهور ١٠ والإياس بتزويجها ١٠، وإن كان حيضا ورأت ورأى الناس أنها ممن لا تياس من المحيض فعدة الحيض فإن الله جعل لذلك مقادير.

97.

Q: (5) What if any such woman in the above-mentioned cases re-marries?

A: (5) None of them may re-marry unless her waiting period expires. Therefore, if she gets married to any other person before such expiration, such marriage shall be void and the couple will be separated from each other.

ذكرت في الذي سألتني من أمر المحيض إن تزوج على شيء من هذه الحالات تسأل كيف يصنع فيما عرف أنه خولف فيه الحق والسنة، فإنه ليس من امرأة نكحت في عدة إلا فرق بينهم، فإن أتى عليهم زمان لم يكره أن تعود مناقحة خولف فيه الحق والسنة على شيء من الحالات إلا ما لم يجمع أهله فقد يكون لهم مراجعة الحق.

98.

Q: You asked me about a father, who gives a gift to his son, wife or relative, claiming that he is giving this person that portion from his property as a gift.

A: With the exception of the case of his son, that will be an effective transfer even if such portion is not clearly identified by the man, and the latter shall be liable for such portion. In case of his son, that will be an effective transfer even if such son is still very young. However, if such portion is not clearly identified by the man, then the son shall receive it from the legacy after his father passes away. However, the son is recommended to declare what portion was given to him by his father, regardless of any claims by any third party.

وأما ما ذكرت من نحل الرجل ولده أو أهل قرابته أو زوجته، لك يا فلان من مالي كذا وكذا، فما شئى لغير الولد من شيء، وإن لم يبين به فهو ضامن له ، وما علم من شيء شيء من ولد فلان لفلان، وفلانة لفلان من مال كذا وكذا فإن ذلك يمضى له، وإن كان الولد في حجر والده، وما كان نحل لولد لم يبين له لم يعلم ما هو فهو في الميراث، والتنزيه أن يعلم الولد ما أبان له والده من ماله فأعلمه إياه، وإن قال الناس غير ذلك.

99.

Q: You asked me about *zakāt* and for what it is mandatory?

A: *Zakāt* applies only to gold, silver, cattle, harvest. As for *zakāt al-fitr*, it applies to living persons, a *ṣā'* for each person in the household.

وأما ما ذكرت من أمر الزكاة وفيه فرضت، فلا نعلمها فرضت إلا في الذهب والفضة والأنعام والحرث وفي الأنفس الصاع.

100.

Q: You asked me whether jewels and pearls are subject to *zakāt*?

A: No, they aren't. *Zakāt* needs to be paid even if the value of jewels and pearls is very high. However, if you keep any item thereof for trade, then *zakāt* applies.

وأما ما ذكرت من الجواهر واللؤلؤ، فلا نعلم فيه زكاة وإن كثر ثمنه، إلا ما أريد به التجارة، وما تفعلوا من خير يعلمه الله.

101.

Q: You asked me about *zakāt*, if it applies to the adornments of our wives. You claim that your wife refuses to pay *zakāt* for such items.

A: You'd better force your wives to pay such *zakāt*. However, if they refuse to do so, then you are not obliged to do more than urging them to pay such *zakāt*.

وأما ما ذكرت من الزكاة في حلي نساءكم، وتزعم أن غلبنكم نساؤكم على زكاة حليهن فأجبروهن على ذلك خير لكم، وإن كرهن من قبل التضييع فليس عليكم إلا الأمر بالمعروف.

102.

Q: And you said, "How can a Muslim man afford to maintain the marriage to a wife who does not pay such *zakāt*?", arguing that some scholars allow them to do this.

A: Their (the scholars) opinion is right when a wife denies that paying of *zakāt* is obligatory. However, this does not apply to the case at hand.

وأما قولك كيف يمسك الرجل امرأة لا تزكي مالها، فإن ذلك إنما يحرم من قبل الكفر بالزكاة والتكذيب. زعمت أنما كتبت تسألني عن ذلك تقول سمعته عن فقهاء قبلك وأنهم لم يضعوا الأمر موضعه، وأسأوا الرواية.

103.

Q: You asked me about marriage procedures?

A: According to ‘Abdallāh ibn ‘Abbās, “no marriage contract may be made without the wife’s guardian.” A marriage contract without the wife’s guardian is void. If a couple gets married in the absence of the wife’s guardian, such couple shall be separated. If such requirement is not satisfied by a marriage the parties did not know the existence of such requirement, then I cannot afford to deem such marriage as void since marriage was declared to the public. ‘Abdallāh ibn ‘Abbās claimed that the testimony of one man and two women and the guardian shall be sufficient for the restoration of a marriage. Cases under this category vary, where mitigation may or may not apply. In this regard, scholars stick to clear-cut solutions and avoid dubious ones. However, we as scholars sometimes meet dubious matters that we cannot deem as impermissible.

كتبت إلي تسألني عن عقد النكاح في النساء، فإن ابن عباس كان يقول ما أوصي بعقدهن في النكاح إذا لم يكن ولها، فأما للأولياء فلا يجوز بغيرهم، وما جومع على ذلك كانت فرقة، ولا جماع بعدها على شيء في الحال، /وما لم يمس ذلك إلى الأولياء حله، وما كان من عقدة لا ولي له فعرض القضاة يملكه ذلك. أما ما جهل من ذلك فلا نزع أنه حرام بعد النكاح المعلن، وقد يسرني أن يرجع فيه إلى عقدة الرجال من غير فرقة، وقد زعم ابن عباس أنه يسع مثل ذلك بشهادة رجل وامرأتين في مراجعة ونكاح مع الولي، وقد تكون الأمور على سبيل متشابهة منها ما لا رخصة فيها والأخرى فيه الرخص، وأهل العلم يشتهون من ذلك ما صفا ويكرهون لبسها، غير أنه قد تكون أمور تتعالى فيما يكره، ولا تبلغ أن تكون حراما، ولا يشتم أهله عليها.

104.

Q: You asked me about a dying man confined to bed who has never had sex with his wife and wants to divorce his wife.

A: Such divorce is invalid. Her divorce becomes effective when it occurs while the husband's life is not at risk during a period equal to the waiting period of a fully married woman. However, 'Abdallāh ibn 'Abbās believes that if such woman re-marries shortly after that husband's death, she shall lose both her right to her dowry and her share in his legacy. If it had not been for 'Abdallāh ibn 'Abbās' opinion, I would have been pleased to say – even if she re-marries she may retain all of her rights, if her share in the legacy has not been disposed of/destroyed.

وأما ما ذكرت /من المرأة لم تمس تطلق عند حضور الموت من زوجها، فلا ولا نعمت عين له حتى تذهب منزلة الضرر وهو حي في مثل عدة من دخل بها إلا أن تزوج المرأة فقد زعم ابن عباس أن ذلك يذهب صداقها كلا وميراثها، زعم أن عليها التربص على مالها حتى يذهب الضرر، ولولا قول ابن عباس في ذلك لسرني وإن تزوجت، إذا عرف الضرر أن تستوجب الأمر كله ما لم يذهب ميراثها.

105.

Q: You asked me about a man who said to his wife: “I only see you as *ḥarām* to me”.

A: It depends on the meaning he intended with these words.

وأما ما ذكرت من رجل قال لامرأته: ما أراك إلا حراما علي فذلك يجعل على نيته.

106.

Q: You asked me about a man who said to his wife: “I fear that you may have committed adultery.”

A: By these words he expresses his bad suspicions. However, this may not be deemed an accusation of adultery. He should not have said that.

وأما ما ذكرت من رجل قال لامرأته: قد خفت أن تكوني زانية، فلا يبلغ ذلك، وهذا من سوء الظن.

107.

Q: You asked me about a woman who sought separation through *al-hul'*, but her husband refused. Later, she said to him: “I'd like to buy a divorce occurrence for one thousand dirham.” The husband accepted

the offer and divorced her once. Then, she claimed that their separation was due to *al-hul'*. The husband argued that he divorced her once and their separation was not due to *al-hul'*?

A: That woman has tricked her husband. What happened between them was a real *al-hul'*; it is not a revocable divorce.

وأما ما ذكرت من امرأة أرادت الخلعة من زوجها فكره عليها، فقالت: يعني تطليقة بألف درهم، ففعل لها، زعمت أنه لا يريد بذلك خلعة، فقد أرى المرأة خدعت زوجها وصار ما أخذ منها من قليل خلعة، وبطل طلاقه بعد ذلك، وهي أملك بنفسها.

108.

Q: And you mentioned that a gang of thieves robbed a group of people. Then they decided to give them back a part of the stolen items. The thieves said to the robbed people: “We are giving back these items to all of you.” One of the robbed group said: “Hear me! You all know that all these returned items were my own before those thieves came. They have taken them from me.” Other members of the group, replied: “We do know that these items are originally yours. However, they were given back to all of us as part of what we all were robbed of.”

A: Since the returned items originally belonged to that man, no one else may take them. They all belong to that man.

وأما ما ذكرت أن لصوصا لقوا قوما فسلبوهم ثم أعطوهم طائفة من الذي سلبوهم إياه، فقال اللصوص: هذا لكم جميعا نعطيكم من أموالكم، فقال الرجل منهم عند ملامتهم: قد علمتم أن هذا المال مالي ومتاعي. فقالوا له: قد نعلم أنه مالك ومتاعك، ولكن أعطينا جميعا بيننا من الذي لنا، فالمال من الرجل رزق أن يرد عليه ماله، وليس لقوم أن يأخذوا من مال آخر وإن أعطوه إن كان على هذا النحو /إلا أن يكون القوم فيما بينهم بمنزلة أهل اللحر فقد أخبرتك، وقد بلغني أنهم يتقولون في سعيهم على ذلك.

109.

Q: You asked me whether it is possible to receive a share of a slave's inheritance?

A:

I have been informed that Ibn 'Umar received an inheritance from his slave. So he used the money to buy the freedom of other slaves and donated it as charity. However, Ibn 'Abbas used to say, "I consider that the owners of slaves have the most right to this money if there is no one but them to inherit it." This is as if he considers the slave owner's authority over the inheritance of the slaves equivalent to his authority over the slave's means of livelihood.

However, if the blood family of the slave is known, then the inheritance is theirs, even if they have not explicitly been given a share in the inheritance. And people may say those opinions of which I have just informed you regarding this matter.

وأما الذي ذكرت هل يجيء حال من الميراث يكون فيه لأهل النعمة نصيب، وأما ابن عمر فقد بلغني أنه أوتي بميراث مولاة / فاعتق عنه وتصدق، وأما ابن عباس فكان يقول: لا أرى أهل النعمة، إذا لم يكن غيرهم وجعل لهم ولاية، إلا أحق به، كأنه يجعل الولاية شبه الطعمة لهم ميراثه، وأما إن عرف أهل الرحم والميراث لهم وإن لم يكونوا ممن ينالهم من الميراث في القسمة، وقد يقول الناس فيه ما قد علمت.

110.

Q: You asked me about a slave woman who entered into a *mukātaba* agreement. Later, her owners found out that she possessed a small wealth. They accused her of concealing such small wealth.

A: If she was asked about her money and denied that she possessed such small wealth, then such small wealth shall devolve to her owners. If they failed to check the money she kept, she may complete her agreement using such money. According to 'Abdallāh ibn 'Abbās, her children shall be automatically included in that *mukātaba* agreement. However, according to 'Ikrima, the bondman of 'Abdallāh ibn 'Abbās, her children shall not be automatically included in that *mukātaba* agreement. In my opinion, we cannot treat slaves the same as money. I recommend a slave who desires to enter into a *mukātaba* agreement to declare: "I have x children and I have money." This will serve as a disclaimer.

وأما الذي ذكرت من المكاتب لها المال، كاتببت على أمر ثم اطلع موابها على مالها فقالوا : كتمتنا مالها، فإن كانت سئلت عن مالها فأخبرتهم ألا مال لها فالمال مالهم، وإن كانوا كاتبوها ولم يفتشوا عن شيء فعسى أن يقضى لها مالها، إلا أن ابن عباس كان يقول: إن كان له ولد كتبهم في الرق، ويزعم مع ذلك عكرمة فتى ابن عباس ما كان من رقيق لم نعلمهم على الرق، ويقول: إنما كاتب على نفس واحدة، وما أرى إن جاز له ماله أن يجعل الرقيق بمنزلة المال، وإن أحب مكاتبه الناس أن يقول رجل: لي من الولد وكذا وكذا، ولي مال، وأنا بخير، فلا يكون عليه فيه تباعة.

111.

Q: You asked me about a male slave, who entered with his owners into a *mukātaba* agreement but has not paid anything yet. He is known to be an honest, hardworking person.

A: The owners may not terminate such agreement. They may urge him and exercise pressure on him to pay the agreed amount. 'Ikrima believes that if such a slave pays any portion of the agreed amount, then he shall be treated as a debtor. Otherwise, the deal shall be subject to the terms of the agreement. 'Ikrima claimed that this was the practice of the people of Medina.

وأما الذي ذكرت من مكاتب كاتب فكتب لك الكتاب فلم يعط شيئاً من أجل صحيفة كتبها إلا أن يعلم منه خير ونصح وجهد، فليس لهم أن يردوه وهو غريم من الغرماء لهم أن يستحثوه بالذي لهم قبله، ويشتدون عليه، غير أن عكرمة يقول: إذا أدى من مكاتبته شيئاً فهو غريم من الغرماء، وإن لم يؤد أخذ بالشرط الذي عليه، وزعم أن أهل المدينة لم يزالوا يفعلون ذلك.

112.

Q: You asked me about a man who gave another man some money to practise *muḍāraba* - may the money owner make conditions?

A: According to 'Abdallāh ibn 'Abbās, this is impermissible unless the money owner tells his partner not to depart with the money to a far-away place and not take it to sea. If the money owner tells him to buy some certain items and not to buy other certain items, the transaction shall be void.

وأما الذي ذكرت من مال المضاربة يعطاه الرجل، هو لرجل صاحب المال أن يشترط عليه، فإن ابن عباس ينهى عن ذلك، إلا أن يقول له: لا تبرح بمالي ولا تخاطر به بحرا، فأما أن يقول اشترى كذا وكذا، ولا تشتري كذا وكذا فلا.

113.

Q: You asked about a business relationship with the (*dahāqīn?*) in their homeland.

A: It is not permissible for a Muslim to make a business partnership with a Nonmuslim, because they treat *harām* as *ḥalāl*.

وأما الذي ذكرت من شركة الدهاقين في أرضهم فلا يحل لمسلم شركة مشرك من أهل الكتاب ولا غيرهم لما يستحلون من الذي يحرم عليهم.

114.

Q: You asked me about a fluid which was dropped in a woman's womb and came out after performing *al-ḡusl*.

A: No worry about that. She does not need to re-perform *al-ḡusl*. She only needs to wash such fluid with pure water.

وأما الذي ذكرت من الماء يحتقن في رحم المرأة اليوم وعامته ثم تصبه بعد الغسل فلا بأس وليس عليها غسل منه إلا أن تنضح المرأة بالماء وتغسل ما أصابها منه.

115.

Q: You asked me about a woman who used a piece of cloth to clean herself, but then she touched her clothes without washing her hands first.

A: She should try to avoid touching any of her clothes before washing her hands. As such abstaining may be difficult then may God forgive her.

وأما الذي ذكرت من امرأة تمس ثوبها ولم تغسل يدها من خرققتها، فما استطاعت المرأة أن توقي ثيابها فلتنفعل، مع أن لا بد فعسى أن تعذر بكثير من تلك الأمور.

116.

Q: You asked me about a man who had sexual intercourse with his female slave without ejaculation. Does she need to perform *al-ḡusl*?

A: Yes, she does. It is obligatory.

وأما الذي ذكرت عن الوليدة يأتيها مولاها فلا ينزل فيها تسأليني عن الغسل، فلتغتسل فإن الغسل واجب.

117.

Q: You asked me about the clothes (mentioned in fatwa 116)?

A: Such clothes need to be washed. If she cannot do so, she may splash water on such clothes.

والذي ذكرت من نضح الثياب فلا، إلا أن يصيب الثوب ما يغسل فليغسل ما أصاب من الثياب، فإن لم تقدر على ما أصاب من الثوب تتضح إن شاءت.

118.

Q: You asked me about a man having sex with his female slave in a house while his other female slave watches?

A: This is unlawful. This is the ugliest thing people can see.

وأما الذي ذكرت من الرجل يجامع وليدته في بيت فلا يحل والأخرى تنظر إليه، فهذا أقبح ما يرى الناس.

119.

Q: A man has taken an oath not to have sex with one of his female slaves. Therefore, he abstained from having sex with any of his slaves. Later, he changed his mind.

A: He needs to make expiation, then he can have sex with them.

I recommend that. Female slaves may not be treated as free women are, except in affinity matters. Some scholars argue that when it comes to affinity, all women are treated alike.

وأما الذي ذكرت من رجل حلف / لا يجامع وليدته فمضى لذلك سنة أو نحو ذلك لم يجامع شيئاً من ولادته ثم بدا له أن يجامع فليكفر وليجامع، فإنه يعجبني ذلك، ولا تجعل الوليدة في اليمين بمنزلة الحرة إلا في أمر المصاهرة، فقد زعم أنها في ذلك بمنزلة الحرة.

120.

Q: A man took an oath not to have sex with his wife for a month. What should he do after the expiration of such period?

A: He needs to make expiation by feeding [sixty] poor people.

However, if months pass by without a single sexual intercourse

between them, then, according to some scholars, the oath ends on the day that the month ends. I recommend that husband to say to his wife: “The month in question has passed, and I am no longer enjoined to abstain from having sex with you.” Then he needs to have sex with her unless he is unable to do so. Nonetheless, if the period in question expires and he fails to retract his vow, he shall be treated as a man who has made a solemn oath. On the other hand, ‘Ikrima argues that all periods are treated the same.

وأما ما ذكرت من رجل حلف لا يجامع امرأته شهرا، ثم مضى الشهر فليطعم وليجامع فأبي ذلك استحباب، وأما إن حلف شهرا ثم مضى لذلك أشهر فإن ناسا يزعمون أن اليمين انقطعت يوم الشهر، وأما أنا فيعجبني أن يعلم الرجل امرأته ذلك فيقول قد مضى الشهر /وأنا غير مول منك وجامع، إلا أن يكون لا يستطيع ذلك، فإن مضى ولم يراجع في يمينه بخير فإنه يعجبني أن يجعل عليه يمين مغلظة فإن لم يبين غير أن عكرمة يزعم أن شهرا وغير ذلك بمنزلة واحدة.

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