

THE ADAB OF THE MUFTĪ

BEING A TRANSLATION FROM
THE INTRODUCTION TO AL-NAWAWĪ'S *AL-MAJMŪʿ*^c

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muftī; al-Nawawī.

Ask the people of knowledge if you do not know. (Q al-Naḥl 16:43)

Introduction

Imam Abū Zakariyyā Muḥyī al-Dīn Yahyā ibn Sharaf al-Nawawī (631-676/1233-1277, born and died in Nawā, southern Syria, after spending most of his life in Damascus), is the *muʿtamad* source of the Shāfiʿī school.¹ That is, he

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1. The eponymous school of Muḥammad ibn Idrīs al-Shāfiʿī (150–204 AH), the student of Imams Mālik and Muḥammad ibn al-Ḥasan al-Shaybānī and one of the teachers of Imam Aḥmad ibn Ḥanbal. Apart from being the codifier of one of the four *madhabs* of Muslim orthodoxy, he is also regarded as the renewer of the third century and was the first scholar to write down the science of *uṣūl al-fiqh*, as demonstrated in his famous work *al-Risāla*, a recent translation and study of which is Joseph E. Lowry, *Early Islamic Legal Theory: The Risāla of Muḥammad Ibn Idrīs al-Shāfiʿī* (Leiden: Brill, 2007); cf. al-Shāfiʿī, *The Epistle on Legal Theory*, ed. and trans. Joseph E. Lowry (New York: New York University Press, 2013).
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is its relied-upon authority, such that his positions and statements are given the greatest weight and all subsequent books and commentaries are based on his books and statements. In addition to his numerous books on Shāfiʿī fiqh, his works are well-known and highly respected throughout the Muslim world, including such titles as *Riḥāḍ al-ṣāliḥīn*, *al-Adhkār*, and *al-Arbaʿūn al-Nawawīyya*. His intention behind composing *al-Majmūʿ*², he writes, was to free the followers of the *madhhab* from having to resort to any other book:

I hope that the completion of this book will allow one to be free of every other book and through it the *madhhab* of al-Shāfiʿī will be decisively known, if Allah the Exalted so wills.³

Indeed, the monumental *Majmūʿ* is the ultimate reference work for the Shāfiʿī school, while the Imam's shorter work, *Minhāj al-ṭālibīn wa ʿumdat al-muftīn*,⁴ is the ultimate curriculum text in the school, studied with one of three commentaries (namely those of Imam Ibn Ḥajar al-Haytamī,⁵ Imam Shams al-Dīn al-Ramlī⁶ and Imam al-Khaṭīb al-Shirbīnī⁷).

Imam al-Nawawī wrote a long introduction⁸ to *al-Majmūʿ*, a wonderful summary of what every teacher and student needs to know as well as every

2. *Kitāb al-Majmūʿ sharḥ al-Muhadhdhab*, ed. Muḥammad Najīb al-Muṭīʿī, 23 vols. (Jeddah: Maktabat al-Irshād, 1970).

3. Al-Nawawī, *Adab al-ʿālim wal-mutaʿallim*, ed. Abū Ḥudhayfa Ibrāhīm ibn Muḥammad (Cairo: Maktabat al-Ṣaḥāba, 1408/1987), 67.

4. *Minhāj al-ṭālibīn wa ʿumdat al-muftīn* (Jeddah: Dār al-Minhāj, 1432/2011).

5. Born in Egypt in 909/1404 and died in Makkah in 974/1567, he is the author of *Tuhfat al-muḥtāj bi-sharḥ al-Minhāj*, a commentary of Imam al-Nawawī's *Minhāj al-ṭālibīn*. He is also the author *al-Manhaj al-qawīm*, which is a commentary of Bā Faḍl al-Ḥadramī's *al-Muqaddimat al-Ḥadramīyya*. Along with Imam Shams al-Dīn al-Ramlī, he is the foremost authority of the entire later Shāfiʿī school, especially for the Shāfiʿīs of the Arabian Peninsula and Southeast Asia.

6. Born in Cairo in 919 AH and died there in 1004, he was the *faqīh* of the abodes of Egypt in his age and the ultimate reference (*marjaʿ*) for *fatwā* for the people of that region. He is known as *al-Shāfiʿī al-ṣaghīr* ("the little Shāfiʿī"), and is one of the foremost authorities of the entire later Shāfiʿī school, especially in Egypt and the Levant. His commentary of Imam al-Nawawī's *Minhāj* is called *Nihāyat al-muḥtāj ilā sharḥ al-Minhāj*.

7. Born in Cairo and died there in 977/1570, he is the author of *Mughnī al-muḥtāj ilā maʿrifā maʿānī alfāz al-Minhāj*, which is his commentary on Imam al-Nawawī's *Minhāj*. He also has a commentary on the *Matn al-Qāḍī Abī Shujāʿ* called *al-Iqnāʿ fī ḥall alfāz Abī Shujāʿ*. His works are especially popular in South-east Asia.

8. *al-Majmūʿ* 1:36-96.

jurisconsult (*muftī*⁹) and questioner (*mustaftī*¹⁰). The value of these few chapters of the introduction was recognized by the Egyptian publisher Maktabat al-Ṣaḥāba, which in 1408/1987 released them as a separate book titled *Adāb al-‘ālim wal-mut‘allim* (“The Etiquettes of the Scholar and the Learner”). The present translation of Chapter 5 of the introduction is thus based on this edition rather than any current edition of *al-Majmū‘*; footnotes are those of the present translator.

This text deals with the qualifications and etiquettes of a *muftī* as well as the etiquettes of a *mustaftī*, but cannot be decisively separated from the preceding chapters, in which the Imam discusses the importance of having a sincere intention, the importance of seeking knowledge, the etiquettes or proprieties of being a learner, and last, but certainly not least, the etiquettes and qualifications of being a teacher (which is of course related to those of a *muftī*). The Imam says:

They have also said that one should not take knowledge except from someone who is perfectly qualified, whose religiosity is manifest, whose realization is affirmed and whose prudence and leadership are well-known. Ibn Sīrīn,¹¹ Mālik¹² and others from the first three generations have stated, “This knowledge is religion, so look at who you take your religion from.” With regards to being qualified to teach, it is not sufficient to have a lot of knowledge. Rather, along with a lot of knowledge in that specific discipline, he should have general knowledge of the other disciplines of the Revealed Law, because they are all connected, and he should be someone of rank, religion, beautiful manners, sound intellect, and full cognizance. They have said that you should not take knowledge from someone who has taken it from the insides of books without reading under shaykhs or one proficient shaykh. Whoever hasn’t taken knowledge except from books will fall into misreading, and

9. A jurisconsult who is qualified to give or issue legal opinions.

10. One who pose a question or problem to a *muftī* for his formal legal response or answer to it.

11. Imam Muḥammad Ibn Sīrīn was born in 33 AH, in the era of the caliph ‘Uthmān ibn ‘Affān, in Baṣra. He is thus considered a Follower (*ṭābi‘ī*) and was a great scholar of *fiqh*, hadith, and *tafsīr*. He is most significantly recognized as the greatest scholar of dream interpretation, as demonstrated by his widely-popular book *Tafsīr al-aḥlām*. He died in Baṣra in 110 AH.

12. Imam Mālik ibn Anas was born in Madīna in 93 AH and died there in 179. He is known as the Imam of Madīna and the Imam of Dār al-Hijra, and is the codifier of one of the four *madhabs* of Muslim orthodoxy. He is also the first scholar to write down a book of hadith along with their *fiqh* rulings, as demonstrated in *al-Muwatṭā’*.

there will be much error and distortion from him.¹³

In an age of mass media and mass communication, it is very easy for a Muslim to give his or her view on a religious matter, and it is just as easy for another Muslim to be fooled by it. Titles like *shaykh*, *sīdī*, *imām*, and so on are granted to various sorts of people with little or no inquiry as to what those titles mean and whether such granting is warranted. Thus, knowledge is sought from such people; they give lectures and teach texts, and they move on to the realm of answering questions, or giving *fatāwā*. Just because a few laypeople regard someone as knowledgeable does not mean that such a person is qualified to teach, let alone give *fatāwā*, and the Imam mentions that the laity are often deceived with regards to whom to take *fatāwā* from:

Abū ‘Amr¹⁴ said, “We should stipulate for the one who reports that he have knowledge and insight that enables him to distinguish that which is dubious from that which isn’t, and one should not rely therein on the information of a few laypeople due to the frequency in which they are deceived.”¹⁵

Thus, Imam al-Nawawī provides some useful guidelines for the layperson to follow when judging whom to take knowledge from and whom to ask for a *fatwā*. There are many instances nowadays of *fatāwā* being given that are either being issued by someone unqualified and/or do not meet the requirements of issuing *fatāwā*. One of the most significant fields in which this is being done being what is called Islamic Banking and Finance (IBF)—very similar to the ‘Islamic Schools’ movement, common in the United Kingdom and other parts of the Anglosphere, and the ‘Islamic State’ movement found amongst several Muslim groups in both the traditional Muslim heartlands as well as farther afield, in that it is an attempt to *Islamize* something that in itself has nothing to do with Islam. ‘Islamization’, as these advocates have coined it, can only have a superficial effect on the branches of these institutions without transforming their foundations.¹⁶

13. *Adab al-‘ālim wal-muta‘allim*, 46.

14. al-Shaykh Abū ‘Amr ibn al-Ṣalāḥ, one of the greatest Shāfi‘ī scholars of *fiqh* and hadith, was born in 577 AH. He travelled extensively for the sake of knowledge, including to Mosul, Baghdad, Jerusalem, and Damascus, where he was the first person to teach at Dār al-Ḥadīth al-Ashrafiyya. He died in the year 643.

15. *Adab al-‘ālim wal-muta‘allim*, 79.

16. For Syed Muhammad Naquib al-Attas’s critique of these superficial Islamization attempts, which simply boil down to vacuous legalism or even *hiyal*-ism, see his *Islam and Secularism* (Kuala Lumpur: ISTAC, 1993); and Wan Mohd Nor Wan Daud, *The Educational Philosophy and Practice of Syed Muhammad Naquib al-Attas: An Exposition of the Original*

Therefore, we find many Islamic schools which follow the same curriculum as any Christian or secular school with the minor exceptions of some additional classes in the Arabic language and something called ‘Islamic Studies’, plus breaks for prayer and maybe a Qur’ān memorization class at the end of the day. The fact that children are classed according to age and have minimal contact with the adult world—something completely alien to Muslim cultures for centuries—is never really questioned. Similarly, any blueprint for an ‘Islamic State’ automatically takes for granted the sprawling bureaucracies that are the hallmark of the modern, overly centralized nation state, with no thought given to the actual governance structures that Muslims inherited and developed for over a thousand years.

IBF, staying in lockstep with the Islamic Schools and the Islamic State projects, also takes for granted the conceptual and structural foundations of what it is trying to *Islamize*, namely modern *ribawī* banking and finance, and only attempts to make cosmetic changes to the branches of those foundations and their transactional contractual forms.¹⁷ This means that the question of “what is money?” is never really asked. From where has paper acquired such exchange value? Is a mortgage the only way of buying and owning a house or a piece of land? A close study of and reflection on the guidelines given by Imam al-Nawawī should help one to go about looking critically at gestures like the IBF movement and scrutinize its advocates and leaders. First and foremost, one can ask whether these advocates are qualified to issue *fatāwā*. Secondly, even if they are qualified, are they meeting the requirements or rulings for issuing a *fatwā*, or are they simply bypassing them in the rush to meet the commercial demands of the IBF industry? One of the rulings for giving a *fatwā* is the following:

The third is that it is unlawful to be negligent in giving *fatwā*, and if someone is known for doing so then it is unlawful to seek a *fatwā* from him. Being negligent includes not proceeding with caution, and hastening to give the *fatwā* before giving it its full right in terms of investigation and reflection. If he already knows the answer because he has been asked about it before, then there is no harm in answering promptly, and this is how what has been related regarding previous scholars answering promptly should be understood. It is also from negligence for corrupt objectives to induce him to pursue unlawful stratagems, or disliked ones,

Concept of Islamization (Kuala Lumpur: ISTAC, 1998).

17. An approach that El-Gamal has aptly termed “rent-seeking shari’ arbitrage”; see Mahmoud A. El-Gamal, *Islamic Finance: Law, Economics, and Practice* (Cambridge: Cambridge University Press, 2006), 162 ff; El-Gamal, “Mutuality as an Antidote to Rent-Seeking Shari’a-Arbitrage in Islamic Finance,” *Thunderbird International Business Review* 49, no. 2 (2007):187-202.

and to cling to doubtful matters in order to get a concession for someone he wants to benefit, or to be strict towards someone he wants to harm.¹⁸

Indeed, before a *fatwā* is issued, the topic at hand must be given its full right in terms of investigation and reflection. The deeper and more recondite questions, that is, those questions that strike at the often hidden foundations and unexamined assumptions of these modern institutions, have to be asked, and only then can *fatāwā* be issued. This means that at times the *muftī* has to take the trouble to bring to the fore the implicit question behind the explicit question. As laypeople (that is, non-specialists in *fiqh*) who are otherwise well informed of the issues at hand and the stark reality behind the facade of things, we can assist our *muftīs* by asking these very questions and, through responsible research, help them to answer them, as the people of knowledge are the property of the Umma. Knowledge, reputation, and a sweet tongue should not dissuade or discourage us from inquiring about matters that need to be investigated, researched, and reflected upon.

This is not to say that we do not have responsibilities and etiquettes as questioners, for they are also mentioned at length by Imam al-Nawawī. What he is actually giving us, may Allah have mercy on him, is the means and tools of how we, as intellectuals, students, and questioners, can interact and work harmoniously with our teachers and *muftīs*, in our local communities and on a global scale, and we ask Allah to grant us *taẓfīq* in this very endeavour, amīn!

My knowledge is with me wherever I turn, benefitting me
 My heart is a vessel for it, not the inside of a box
 When I am at home, the knowledge is there, with me
 And when I am in the market, the knowledge is in the market
 (Imam al-Shāfi‘ī)¹⁹

18. *Adab al-‘ālim wal-muta‘allim*, 79.

19. *Dīwān al-Imām al-Shāfi‘ī*, ed. Na‘īm Zarzūr (Beirut: Dār al-Kutub al-‘Ilmiyya, 1984), 83.

Translation of Chapter Five of the Introduction to al-Nawawī's *al-Majmūʿ*: The Etiquettes of a *Fatwā*, the *Muftī*, and the One Seeking a *Fatwā*

Know that this chapter is very important. I wanted to give it precedence due to the general need for it, and a group of our companions²⁰ have already written about this, including:

1. Abū al-Qāsim al-Ṣaymarī,²¹ shaykh of the author²² of *al-Ḥāwī*²³
2. Then al-Khaṭīb Abū Bakr al-Ḥāfiẓ al-Baghdādī²⁴
3. Then al-Shaykh Abū ʿAmr ibn al-Ṣalāḥ.

Each one of them mentioned precious things that haven't been mentioned by anyone else. I have studied the three books and extracted a brief summary that comprises every important matter that they mentioned and I have added to them some gems from the miscellaneous speech of our companions, and with Allah is every success.

Know that giving *fatwā* (*al-iftāʾ*) is a matter of immense significance, formidable position, and much precedence; because the *muftī* is the inheritor of the Prophets, may Allah's prayers and peace be upon them, and he is carrying out a communal obligation, but he is liable to make mistakes. This is why they have said, "The *muftī* has a position with Allah the Exalted." We have related on the authority of Ibn al-Munkadir²⁵ that

20. That is, the Shāfiʿis.

21. Imam al-Ṣaymarī, a resident of Baṣra, is regarded as a memorizer of the Shāfiʿī *madhhab* and he was the teacher of Imam al-Māwardī, described below. The date of his death is not specified, as Imam Ibn Ṣalāḥ states that he died after the year 386 AH, while Imam al-Dhahabī states that he was alive after the year 405.

22. Imam Abū al-Ḥasan al-Māwardī, born in Baṣra in 364 AH, was the chief of the judiciary under the ʿAbbāsīd caliph al-Qāʾim bi-Amrillāh and also a memorizer of the Shāfiʿī *madhhab*. He published major works in *fiqh*, *tafsīr*, and *uṣūl al-fiqh*. His most famous work is *al-Aḥkām al-sultāniyya*, which deals with the topic of governance in the Revealed Law. He died in Baghdad in the year 450.

23. That is, *al-Ḥāwī al-kabīr*, which is Imam al-Māwardī's book on Shāfiʿī *fiqh* and comprises approximately twenty volumes.

24. al-Khaṭīb al-Baghdādī, universally acknowledged as the Ḥāfiẓ of the East, born in Baghdad in 392 AH, studied with the major authorities and hadith specialists of his time, and was the first to have systematically addressed the topics of *taqlīd* and *ijtihād* and their historical development. He is also one of the greatest historians who ever lived, as demonstrated by his monumental *Tārīkh Baghdād*. He died in Baghdad in 463.

25. Ibn al-Munkadir (54-130 AH) is a hadith narrator from the people of Madīna. He met some of the Companions and narrated approximately

he said, “The scholar is between Allah the Exalted and His creation, so look at how he enters between them.” We have related on the authority of the first three generations and those who stand out from amongst the *khalaḥ*²⁶ many well-known statements regarding abstaining from giving *fatwā*, and we shall mention some of them in order to seek their blessings (*tabarrukan*).

We have related on the authority of ‘Abd al-Raḥmān ibn Abī Laylā²⁷ that he said, “I met one hundred and twenty of the Helpers (*al-anṣār*) from the Companions of the Messenger of Allah, may Allah bless him and grant him peace. One of them was asked about an issue and he passed it on to someone else, and he in turn passed it on to someone else until it eventually came back to the first person.” In another narration: “Not a single one of them would relate a hadith except that he wished that his brother would spare him from having to do so, and none of them would be asked about something except that he wished his brother would spare him from having to give *fatwā*.”

It is [related] on the authority of Ibn Mas‘ūd and Ibn ‘Abbās, may Allah be pleased with them: “Whoever gives a *fatwā* regarding everything he is asked about is mad (*majnūn*).”²⁸

It is [related] on the authority of al-Sha‘bī, al-Ḥasan, and Abū Ḥuşayn, who were Followers: “Indeed one of you will give *fatwā* regarding an issue, and if it were to reach ‘Umar ibn al-Khaṭṭāb, may Allah be pleased with him, he would gather the people of Badr against it.”

It is [related] on the authority of ‘Aṭā’ ibn al-Sā‘ib, the Follower: “I met some people and one of them was asked about a matter and when he spoke he was trembling.” It is [related] on the authority of Ibn ‘Abbās and Muḥammad ibn ‘Ajlān²⁹: “If the scholar is heedless of ‘I don’t know’, then his assailant has indeed afflicted him.” It is [related] on the authority of Sufyān ibn ‘Uyayna and Saḥnūn³⁰: “The boldest of people with regards to

two hundred hadiths.

26. That is, the generations after the first three.

27. ‘Abd al-Raḥmān ibn Abī Laylā (d. 83 AH), is a Follower and hadith narrator from Madina who settled in Kufa.

28. That is, he never says, “I don’t know.”

29. Muḥammad ibn ‘Ajlān, who died in 148 AH in Madina, is a scholar of *fiqh* and hadith who narrated from several Companions. He taught in the Prophet’s Maṣjid, Allah bless him and grant him peace, and also issued *fatwās* there.

30. Imam Saḥnūn ibn Sa‘īd al-Tanūkhī, one of the most famous Mālikī scholars, was born in the city of Kairouan in 160 AH and studied with its greatest scholars before travelling to seek knowledge in Egypt, the Levant, and the Ḥijāz. He returned to Kairouan in 191 and worked

giving *fatwā* are the least of them in knowledge.”

It is [related] on the authority of al-Shāfi‘ī that he was asked about an issue and he didn’t answer. He was asked why and he replied, “Until I know whether it is better to remain silent or to give an answer.”

It is [related] on the authority of al-Athram³¹: “I heard Aḥmad ibn Ḥanbal often saying, ‘I don’t know’, and it is amongst the known saying and proverbs on the matter.”

It is [related] on the authority of al-Haytham ibn Jamīl³²: “I witnessed Mālik being asked about forty-eight issues, and regarding thirty-two of them he said, ‘I don’t know.’”

It is [related] also on the authority of Mālik that he was maybe asked about fifty issues, and he didn’t answer a single one of them. He used to say, “Whoever gives an answer regarding an issue, before he answers he should place himself before Paradise and the Fire; how will he end up? Then he should answer.” He was asked about an issue and said, “I don’t know.” It was then said to him, “It’s a light, easy issue.” He then became angry and said, “There is nothing light in knowledge.”

Al-Shāfi‘ī said, “I never saw anyone in whom Allah the Exalted had gathered the tools of *fatwā* as he gathered them in Ibn ‘Uyayna, and [yet] who was more silent than him with regards to *fatwā*.”

Abū Ḥanīfa said, “If it were not for the fear from Allah the Exalted that knowledge would be lost I would not give *fatwā*; they get the delight³³ and I get the burden of responsibility.” Their statements regarding this are many and well-known.

Al-Ṣaymarī and al-Khaṭīb said, “They are few those who are keen to give *fatwā*, racing towards it and applying themselves with zeal, except that they have little success and they are disturbed in their affairs even if they don’t like it, can’t influence it, and can’t find any alternative. If he

towards spreading the Mālikī *madhhab* in Africa and Andalusia, his most significant work on the subject being *al-Mudawwana al-kubrā*, which is a collection of questions and answers according to the *fiqh* of that school. He died in Kairouan in the year 240.

31. Imam Abū Bakr al-Athram, who died in 287 AH in Baghdad, is a Ḥanbali scholar of hadith and direct student of Imam Aḥmad ibn Ḥanbal, who appointed him one of his successors in both *fiqh* and hadith. He memorized over 700,000 hadiths.

32. Known as the *muḥaddith* (hadith scholar) of Antioch, al-Haytham ibn Jamīl Abū Sahl al-Baghdādī was a great memorizer who narrated hadiths from the likes of Imam Mālik and Imam Layth and was narrated from by the likes of Imam Aḥmad ibn Ḥanbal. He died in the year 213 AH.

33. That is, they get their questions answered.

changes his affair then the support from Allah is greater and propriety in his answers is greater, as proven by his statement, Allah bless him and grant him peace, in the authentic hadith: ‘Do not ask for rulership (*al-imāra*), for indeed, if you are given it by way of asking you will be solely in charge of it, and if you are given it without asking you will be assisted with it.’”³⁴

Section

Al-Khaṭīb said, “The Imam³⁵ should scrutinize the *muftī*s, and whoever is suitable for giving *fatwā* he should confirm and whoever is unsuitable he should prevent, and he should forbid him from going back and threaten to sanction him if he does go back. The way for the Imam to know who is suitable for *fatwā* is to ask the scholars of his time, and rely on the reports of those who are trustworthy from amongst them.” Then he³⁶ related, with his own chain of transmission, on the authority of Mālik, Allah have mercy on him, that he said, “I did not give *fatwā* until seventy people testified that I was qualified to do so.” In another narration: “I did not give *fatwā* until I asked those who were more knowledgeable than me if they saw me as right to do so.” Mālik said, “A man should not see himself as qualified for anything until he has asked those more knowledgeable than him.”

Section

They have said, “The *muftī* should be outwardly careful and be well-known for his outward religiosity and dazzling prudence. Mālik, Allah have mercy on him, would do more than what he had enjoined upon the people. He would say, “One is not a scholar until one does more oneself than what one enjoins upon the people, such that if he were to leave it off he would not be sinning.” He would also narrate something similar from his shaykh Rabi‘a.³⁷

Section

It is a condition of the *muftī* to be legally responsible (*mukallaf*), Muslim, reliable, trustworthy, removed from the causes of iniquity and the violators of respectability (*al-murūʿa*), a jurist of the self (*faqīh al-nafs*), of

34. Narrated by the Imams al-Bukhārī and Muslim.

35. That is, the caliph.

36. That is, al-Khaṭīb.

37. Rabi‘a ibn Farrūkh al-Taymī al-Madanī Abū Sulaymān is a great memorizer of hadith and a *faqīh* who was born in the first century AH. He taught in the Prophet’s Mosque, Allah bless him and grant him peace, and was known as the *faqīh* of Madina.

sound intellect, composed thought and sound conduct (*al-laṣarruf*)³⁸ and derivation (*al-istinbāl*), and vigilant regardless of whether he is dealing with a freeman, a slave, a blind person, or a mute if he writes or his gestures are understood.

Al-Shaykh Abū ‘Amr ibn al-Ṣalāḥ said, “He should be like a narrator (*al-rāwī*) in that he is not influenced by kinship or animosity, and bringing about benefit and deflecting harm; because the *muftī*, with regards to a ruling, is informing on behalf of the Revealed Law in that which no individual has jurisdiction. Thus he is like a narrator and not like a witness, and his *fatwā* does not have an obligation attached to it, as opposed to the judge’s verdict (*ḥukm al-qāḍī*).” He also said, “The author of *al-Hāwī* mentioned that if the *muftī* displays animosity in his *fatwā* towards a specific individual he becomes an antagonistic arbitrator, and his *fatwā* is rejected with regards to the person he has animosity towards, just as his testifying (*shahāda*) regarding him would be rejected.”

They have all agreed that it is not valid for an iniquitous person to give *fatwā*, and al-Khaṭīb has transmitted it as being the consensus of the Muslims. If something happens to him³⁹ he must use his own personal reasoning (*ijtihād*). As for the one who is veiled, and he is the one who is outwardly just but his inward justice has not been examined, there are two opinions. The most correct of them is that his *fatwā* is permissible, because his inward justice is difficult to know for those who are not judges. The second opinion is that it is not permissible, like testifying, and the difference of opinion is like the difference of opinion regarding the validity of a marriage contract in the presence of veiled people.⁴⁰ Al-Ṣaymarī said, “The *fatāwā* of the people of evil desires (*ahl al-hawā’*)⁴¹ are valid, as well as the Khawārij,⁴² and whomever we do not declare disbelievers because of their innovation nor do we declare to be iniquitous.” Al-Khaṭīb transmitted this and then said, “As for the *Shurra*⁴³ and the *Rāfiḍa*,⁴⁴ who insult the righteous first three generations, their *fatāwā* are rejected and

38. Also meaning: to act independently.

39. That is, the *muftī*.

40. That is, nothing is known about the inward justice of the guardian and witnesses.

41. A byword for the people of cults and innovation.

42. That is, the first Khawārij, whose main issue was *takfīr* (declaring Muslims to be disbelievers) and were known to be truthful, not the later manifestations of the cult that can be read about in *al-Ghunyā li Ṭālib Ṭarīq al-Ḥaqq* by Imam ‘Abdul Qādir al-Jilānī, for example.

43. That is, the Ismā‘īlīs and the Bāṭinites.

44. That is, the Twelver Shī‘a.

their statements⁴⁵ are omitted.”

The judge is like others with regards to the permissibility of giving *fatwā* without any dislike. This is the correct and well-known position from our *madhhab*. Al-Shaykh⁴⁶ said, “I saw in some of the remarks of al-Shaykh Abū Hāmid⁴⁷ that he had the *fatwā* regarding acts of worship (*al-ʿibādāt*) and that which was not connected to judgeship.” Regarding judgeship, our companions have two opinions. One of them is that it is permissible because he is qualified and the other is that it isn’t because it is a position of accusation (*tuhma*). Ibn al-Mundhir⁴⁸ said, “It is disliked to give *fatwā* with regards to issues of rulings in the Revealed Law.”⁴⁹ Al-Shurayh⁵⁰ said, “I judge and I do not give *fatwā*.”⁵¹

Section

Abū ‘Amr said, “*Muftīs* fall into two categories: the independent and otherwise.”

The first category: The condition for the independent *muftī*, along with what we have mentioned, is that he be a custodian with the knowledge of the evidences of the Revealed Law’s ruling from the Book, the Sunna, consensus and analogy, and what is attached to them by way of detail, and they have been laid out in detail in the books of *fiqh* and facilitated, praise be to Allah. He must be a scholar of what is stipulated concerning evidences, and the various aspects that they indicate, and of how to acquire rulings from them, and this is drawn from the foundations of *fiqh*. He should know the sciences of the Qurʾān, hadith, the abrogating and the abrogated, grammar, language, morphology,

45. That is, their positions in *fiqh*.

46. That is, al-Shaykh Abū ‘Amr Ibn al-Ṣalāh.

47. Al-Shaykh Abū Hāmid al-Asfarāyanī is a Shāfiʿī scholar who was the undisputed shaykh of his time. He was born in 344 AH and moved to Baghdad in 364 for the sake of knowledge, where he became a much sought-after teacher. His *fiqh* class was attended by approximately three hundred aspiring jurists. He died in 406 AH.

48. Ibn al-Mundhir is a Ḥanbalī judge who died in 360 AH, and was called the “Collector of Consensus Positions” (*Jāmiʿ al-ijmāʿāt*) because of his book *Kitāb al-Ijmāʿ*.

49. That is, a *muftī* can’t give a *fatwā* against what has been established in the Revealed Law, and neither can he give a *fatwā* regarding new issues. Rather, his job is to refer to the jurists (*fuqahāʾ*) from amongst his contemporaries or his forbearers.

50. That is, al-Qāḍī al-Shurayh, a famous judge in the time of Imam ‘Alī ibn Abī Ṭālib, Allah be pleased with both of them.

51. That is, in addition to the above footnote, the Qāḍī is stating that his rank is higher and his ruling is binding, as opposed to the *fatwā* of a *muftī*.

and the differences of opinion amongst the scholars and their agreements to such an extent that he is able to fulfil the conditions of the evidences and take from them. He must have a lot of experience and practice in using that,⁵² and be a scholar of *fiqh* and its foundational issues as well as its branches. Whoever gathers all of these qualities is an absolute, independent *muftī* through whom the communal obligation is carried out, and he is an absolute, independent *mujtahid*, because he acts independently with the evidence without imitating or being restricted to anyone's *madhhab*.

Abū 'Amr said, "What we have stipulated regarding memorizing the issues of *fiqh* has not been stipulated in many of the well-known books of *fiqh*, due to it not being a condition for the office of *ijtihād*, because *fiqh* is its fruit and thus comes later, and a condition of something cannot come after it." Al-Ustādh Abū Ishāq al-Isfarāyīnī⁵³ stipulated it, as well as his companion Abū Manṣūr al-Baghdādī,⁵⁴ and others. To make it a stipulation for the *muftī* through whom the communal obligation is carried out is the correct position, even if it is not the case with regards to the independent *mujtahid*. Furthermore, it is not a condition that all the rulings be in his head. Rather, it suffices for him to have memorized most of them and have easy access to the rest.

[As regards the question] is it a condition for him to know the necessary arithmetic (*al-ḥisāb*) to emend mathematical juristic issues? Abū Ishāq and Abū Manṣūr have related a difference of opinion amongst our companions, and the most correct position is that it is a condition. Furthermore, we only stipulate the combining of the abovementioned sciences for an absolute *muftī* in all the categories of the Revealed Law. As for a *muftī* in one specific category (*bāb*), such as the rites of the Ḥajj, or inheritance (*al-farā'id*), then it suffices him to know that category, as has been decisively affirmed by al-Ghazālī and his companion Ibn Barhān,⁵⁵ and others. There are those amongst them

52. That is, that extent of knowledge.

53. Commonly spelled as al-Asfarāyanī, al-Ustādh Abū Ishāq is a Shāfi'ī scholar who lived in Iraq and Esfarayen, his hometown, before being invited by the people of Nishapur to settle there. He accepted the invitation and a magnificent school was built for him, the likes of which had never been seen in Nishapur. He remained there until his death in 418 AH, after which he was transported to his hometown and buried there.

54. Al-Ustādh Abū Manṣūr 'Abdul Qāhir al-Baghdādī was a student of al-Ustādh Abū Ishāq, and others, in Nishapur until he became a proficient scholar in his own right and teacher of seventeen sciences of the Revealed Law. Al-Ustādh Abū Ishāq appointed him as his successor and he held the position until moving to Esfarayen, where the people were immensely impressed by him. He died there in the year 429 AH and was buried next to his teacher.

55. Ibn Barhān is Aḥmad ibn 'Alī ibn Muḥammad al-Wakīl (b. 479 AH), a

who forbid it absolutely,⁵⁶ and Ibn al-Ṣabāgh⁵⁷ said it is was only permissible with regards to inheritance. The most correct position is that it is absolutely permissible.

The second category: The *muftī* who is not independent, and it has been a long time since there was an independent *muftī*, and *fatwā* came to be attributed to the imams of the followed *madhhabs*.⁵⁸ The attributed *muftī* has four states:

The first [state] is that he imitates his imam neither in the *madhhab* nor in his evidences, due to him being described as independent. Rather, he is only attributed to him because he follows his path in *ijtihād*, and al-Ustādhl Abū Ishāq claimed this quality from amongst our companions, and it has been related from the companions of Mālik, Allāh have mercy on him, as well as those of Aḥmad, Dāwūd, and most of the Ḥanafīs that they ended up imitating the imams of their *madhhabs*. Then he⁵⁹ said, “And the correct position is what the verifying scholars amongst our companions have gone with, and it is that they ended up at the *madhhab* of al-Shāfi‘ī, not imitating him, but rather they found his paths of *ijtihād* to be the most correct and pertinent of paths. When it came to *ijtihād* they couldn’t avoid following his method and thus they sought to know the rulings according to al-Shāfi‘ī’s method.”

Abū ‘Alī al-Sinjī⁶⁰ mentioned something similar to this when he said, “We followed al-Shāfi‘ī and no one else because we found his statement to be the most preferred of statements and the most balanced of them. We did not imitate him.” That which they have mentioned corresponds to what al-Shāfi‘ī commanded them to and then al-Muzanī⁶¹ at the beginning of his

follower of the Ḥanbalī *madhhab* who became a Shāfi‘ī scholar of *fiqh* and *uṣūl al-fiqh*, studying with Imam al-Ghazālī and eventually teaching at the Nizāmiyya in Baghdad. He died in Baghdad in the year 520.

56. That is, he must know the abovementioned sciences.

57. Ibn Ṣabāgh (400-477 AH) is the famous Shāfi‘ī scholar and *faqīh* Abū Naṣr al-Baghdādī, the author of *al-Shāmīl*. He started teaching in the Nizāmiyya in Baghdad as soon as it was opened in 459 and also taught in the same mosque that Imam al-Shāfi‘ī had taught in. His level of knowledge in *fiqh* was such that in the *madhhab* he was preferred over Abū Ishāq al-Shirāzi.

58. That is, the four *madhhabs*.

59. That is, Abū ‘Amr.

60. Imam Abū ‘Alī al-Sinjī was a great memorizer of hadith and regarded as the most knowledgeable person in that science in the whole of Khorasan. He died in the year 315 AH.

61. Imam Abū Ibrāhīm Ismā‘īl ibn Yahyā ibn Ismā‘īl al-Muzanī al-Maṣrī is one of the greatest companions of Imam al-Shāfi‘ī, such that the Imam said that if al-Muzanī were to debate Satan he would beat him.

Mukhtaṣar, as well as others, in his statement along with his two notifications: his forbidding of imitating him and of imitating others. Abū ‘Amr said, “The claim that absolutely negates imitation from them is not right and does not fit what is known about their state and the state of most of them.” One of the people of *uṣūl*⁶² from amongst us has related that there is no independent *muṭtahid* after the age of al-Shāfi‘ī. Furthermore, the *fatwā* of the *muṭṭī* in this state is like the *fatwā* of the independent *muṭṭī* in that it is acted upon and considered in consensus and difference of opinion.

The second state is that he is a *muṭtahid* who is restricted to the *madhhab* of his imam and he is independent in determining his foundations with the evidence. However, in his evidence he does not go beyond the foundations and principles of his imam. It is a condition that he be a scholar of *fiqh* and its foundations as well as of the evidences of the rulings in detail. He must also have insight into the procedures of analogies and significations (*al-ma‘ānī*), be fully experienced in extraction (*al-takhrīj*) and derivation, and a custodian with regards to attaching what is not *manṣūṣ ‘alayh*⁶³ for his imam according to his foundations. He is not stripped of the blemish of imitating him⁶⁴ due to the fact that he lacks some of the tools of the independent *muṭṭī*, for example, by failing to meet all the conditions of mastering the Hadith or Arabic, and the one who is restricted often fails to meet the conditions of these two. Then he adopts the texts of his imam as foundations and derives from them just as the independent *muṭṭī* does with the texts of the Revealed Law.⁶⁵ Maybe he will be content with a ruling based on the evidence of his imam, and he will not look for something to contradict it, as the independent *muṭṭī* does with the texts of the Revealed Law. This is the quality of our companions who are the people of opinions (*aṣḥāb al-wujūh*), and it is the quality that the imams of our companions were upon, or most of them. The one who acts upon the *fatwā* of this person is an imitator of the imam⁶⁶ and not the person [himself].

Furthermore, the outward speech of the companions is that the communal obligation is not carried out through a *muṭṭī* in this state. Abū ‘Amr said, “It is

He wrote several books in *fiqh*, including *al-Mukhtaṣar*. He was born in 175 AH and died in Cairo in the year 264. He was prayed over by another of Imam al-Shāfi‘ī’s companions, al-Rabī‘, and buried in the Qarāfa cemetery near to the Imam himself.

62. That is, a scholar of the foundations of *fiqh*.

63. That is, that which is either a position of al-Shāfi‘ī, a text from him, or an opinion of one of the scholars of the *madhhab*: see al-Nawawī, *Minhāj al-tālibīn*, 645.

64. That is, the imam of his *madhhab*.

65. That is, the Book and the Sunna.

66. That is, imam of the *madhhab*.

obvious that the obligation is carried out through him with regards to giving *fatwā*, even though it is not carried out with regards to reviving the sciences (*ihyā' al-ʿulūm*) from which a *fatwā* is procured; because he takes the place of his independent imam in deriving branch rulings, according to the correct position.” It is permissible to imitate the dead, and then the restricted person might act independently in an issue or a specific category, as has already been mentioned. He can also give *fatwā* regarding which there is no text from his imam by extracting it based on his foundations. This is the correct position, which is acted upon and in which the *muftīs* have sought refuge in for a long time. Furthermore, if he gives a *fatwa* based on his extraction, then the one asking the question (*al-mustaftī*) is imitating the imam⁶⁷ and not him. This was decisively affirmed by Imam al-Ḥaramayn⁶⁸ in his book *al-Ghiyāthī*,⁶⁹ and how abundant are its benefits. Al-Shaykh Abū ‘Amr said, “This should be extracted based on a dispute that was related by al-Shaykh Abū Ishāq al-Shīrāzī⁷⁰ and others, which concerns that which is extracted by our companions; is it permissible to attribute it to al-Shāfi‘ī? The most correct position is that it is not attributed to him.”

Furthermore, sometimes he extracts from a specific text of his imam, and sometimes he doesn't find it so he extracts based on his foundations by finding an evidence that matches the conditions his imam used as proof. Thus, he gives *fatwā* according to what it necessitates, for if the imam gives a text regarding something and then gives a text concerning an issue that resembles

67. That is, of the *madhhab*.

68. Diyā' al-Dīn Abū al-Ma'ālī 'Abd al-Mālik, Imam al-Ḥaramayn al-Juwaynī was the imam of imams in his age, the Shāfi'ī scholar of his time in *fiqh* and *uṣūl*. Born in Juwayn (in present-day Afghanistan) in 419 AH, he studied with his father before moving to Nishapur and then Baghdad, followed by four years of teaching in Makka and then in Madina, earning the title *Imām al-Ḥaramayn* (“Imam of the Two Sanctuaries,” i.e., Makka and Madina). He eventually returned to Persia to teach at the Nizāmiyya in Nishapur. In addition to the great books he has left behind, such as *al-Waraqāt* in *uṣūl al-fiqh*, he is also famously known as the teacher of the Proof of Islam and the Muslims, Imam Abū Ḥamid al-Ghazālī. When died in Nishapur in 478 AH he had approximately four hundred students, who broke their pens and inkwells out of grief at the news of his death.

69. That is, *Ghiyāth al-umam fī-iltiyāth al-zulm*.

70. Shaykh al-Islām Abū Ishāq al-Shīrāzī is the author of *al-Muhadhdhab*, the text upon which Imam al-Nawawī's *Majmū'* is a commentary. He was the first person to teach at the Nizāmiyya in Baghdad, receiving students from east and west, and was asked for *fatwā* from far and wide. He was born in Firuzābād in the year 393 AH and died in Baghdad in 475.

it that contradicts the former text and thus one extracts from one of them to the other, this is called an extracted position (*qawl mukharraj*). The condition for this extraction is that one does not find any difference between the two texts, for if he finds any difference between them he must affirm both of them based on their outward purport. They often differ with regards to positions that are extracted in this manner due to their differing over the possibility of a difference.⁷¹

I have said: And in most of that there could be a difference and they mentioned it.

The third state is that one does not reach the rank of the people of opinions, but he is a jurist of the self, has memorized the *madhhab* of his imam, he knows its evidences, he stands by their affirmation, he illustrates, he edits, he affirms, he paves the way, he declares that which is false and he gives preference. However, he is less than the aforementioned because he is less than them in memorizing the *madhhab*, or in his experience in derivation, or in his knowledge of the foundations, or he lacks some of the other tools that they possess. This is the attribute of many of the later scholars, up until the late fourth century; the writers who regulated the *madhhab* and edited it and they produced written works containing most of what people are busy with today, and they didn't measure up those who came before them in extraction. As for their *fatwās*, they didn't expand in detail to the extent that the aforementioned did, or even close. They made analogies regarding that which there was no text (*ghayr al-manqūl 'alayh*) without restricting themselves to obvious analogy (*al-qiyās al-jallī*).⁷² There are those amongst them whose *fatāwā* have been gathered, and in their adherence to the *madhhab* they have not reached the amount of *fatāwā* of the people of opinions.

The fourth state is that one is engaged in memorizing the *madhhab*, transmitting it and understanding it in terms of both its clear matters and its obscure matters, but he has some weakness in affirming its proofs and editing its analogies. This person is relied on in his transmitting and in his *fatwā* in

71. Shaykh Wahba al-Zuhaylī explains extraction (*takhrīj*) as: “al-Shāfi‘ī answers with two different rulings regarding two situations that resemble each other, and it is not clear why the two rulings should be different. Thus, the companions transfer al-Shāfi‘ī’s answer in one situation to the other, and thus each situation comes to have two positions; one is called *manṣūṣ* and the other *mukharraj*. The *manṣūṣ* in one issue is the *mukharraj* in the other, and the *manṣūṣ* in the other is the *mukharraj* in the former. Thus, it is said, ‘There are two positions based on transferring (*naql*) and extraction,’ and the most correct position is that the extracted position is not attributed to al-Shāfi‘ī, because maybe he reconsidered it and mentioned a difference.” *al-Fiqh al-Shāfi‘ī al-muyassar* (Beirut: Dār al-Fikr, 1429/2008), 1:74.

72. That is, an analogy that is easy to recognize.

what he relates from the writings of his *madhhab* from the texts of his imam, and the branching of the *mujtahids* in his *madhhab*, and the same goes for what he doesn't find to be transmitted if its meaning is found to be transmitted, such that he realizes without a great deal of thought that there is no difference between the two; it is permissible to adhere to it and give *fatwā* based on it. The same goes for what he knows to be inserted under a regulator (*dābiṭ*) who paves the way in the *madhhab*, and what isn't like that must be refrained from when giving *fatwā*, and situations like this occur rarely with regards to the aforementioned, since it is unlikely, as Imam al-Ḥaramayn has said, for an issue to occur for which there is no text in the *madhhab* or even in the meaning of *manṣūṣ* or inserted under a regulator. The condition for him to be a jurist of the self is that he have an abundant share of *fiqh*. Abū 'Amr said, "And what suffices with regards to memorizing the *madhhab* in this state and that which is before is that most of it is in his mind, and due to his experience he can easily access the rest."

Section

These are the classes of the *muftīs* and they are five,⁷³ and each class stipulates memorizing the *madhhab* and being a jurist of the self. Thus, whoever applies himself to giving *fatwā* without possessing this attribute has fallen into an immense matter. Imam al-Ḥaramayn and others have decisively affirmed that the proficient scholar of *uṣūl*⁷⁴ who discharges his individual duty in *fiqh* is not allowed to give *fatwā* based on those qualifications alone. If something happens to him it is incumbent upon him to ask about it, and therein adhere to someone who acts independently,⁷⁵ is keen-eyed and is a researcher from [amongst] the imams who differ with each other and one of the luminaries amongst those who debate, because he is not qualified to obtain the ruling for that incident independently due to his shortage of tools, nor from the *madhhab* of an imam due to his lack of memorizing it to any considerable degree.

If it is said, "Someone who has memorized a book or more in the *madhhab* and falls short, and thus is not described with the qualities of any of the aforementioned, if a layperson can't find anyone besides him in his locality, can he refer to his position?" The answer is that if there is a *muftī* outside of his locality and he finds a way to access him, then he must try his best to reach him. If that is impossible, then he mentions the issue to this person who falls short. Then he, in turn, if he finds the exact same issue in a book whose

73. That is, the class in the first category, and the other four classes or states in the second category.

74. That is, *uṣūl al-fiqh*, or foundations of jurisprudence.

75. That is, a *muftī*.

veracity is trusted and it is from someone whose reports are accepted, he transmits the issue's ruling to him as it is written, and the layperson in this case is imitating the imam of the *madhhab*. Abū 'Amr said, "I found this implied in the speech of some of them, and the evidence supports it. If he doesn't find the very issue in written form he must not make an analogy based on the written materials that he has, even if he believes it to be an analogy in which there is no dissimilarity, because he could be mistaken." If it is said, "Can the imitator give *fatwā* regarding that which he is imitating?," we say: Abū 'Abdillāh al-Ḥalīmī,⁷⁶ Abū Muḥammad al-Juwaynī,⁷⁷ and Abū al-Muḥāsīn al-Rūyānī,⁷⁸ as well as others, have decisively affirmed that it is unlawful, while al-Qaffāl al-Marwazī⁷⁹ said it was permissible.

Abū 'Amr said, "The position of those who prohibit it means that the one who mentions it does not claim it to be from himself. Rather, he attributes it to the imam whom he follows. It is based on this that there are some who consider such a person to be an imitating *muftī* and not a real *muftī*, but when they take their place and carry out their function on their behalf they are considered to be among them. Their procedure is for them to say, 'The *madhhab* of al-Shāfi'ī is such-and-such...' or 'like this', and if someone fails to attribute it then it suffices if it is known from the context, such that it doesn't have to be clearly stated, and there is no harm in that." The author of *al-Ḥawī* has mentioned with regards to the layperson that if he knows the ruling for an event based on

76. Imam Abū 'Abdillāh al-Ḥalīmī was the shaykh of the Shāfi'īs in Transoxiana. He was born in Bukhārā, although some say Jurjān, in the year 338 AH and died in 403.

77. This is the father of Imam al-Ḥaramayn. He was an imam in *tafsīr*, *fiqh*, and literature and wrote a large *tafsīr* in which he commented on each verse from the standpoint of ten sciences from the Revealed Law. He died in Nishapur in 438 AH.

78. The 'Judge of Judges,' 'Abdul Wāḥid ibn Ismā'īl al-Rūyānī, was regarded as the judge (*qāḍī*) of the Shāfi'īs in his age. He was born in 415 AH in what is now northern Iran and travelled to Bukhārā, Amol, Nishapur and other places for the sake of knowledge. He reached such a level of proficiency in the *madhhab* that he used to say, "If all the books of al-Shāfi'ī were burnt I would be able to recover them from my memory," and he was indeed called the Shāfi'ī of his time. He was martyred at the hands of members of the Ismā'īlī cult in the central mosque of Amol on Friday, the 11th of Muḥarram, 501/502 AH.

79. Abū Bakr al-Qaffāl al-Marwazī is a Shāfi'ī scholar from Khorasan, known as the shaykh of the people of Khorasan. He worked as a locksmith in the early part of his life (hence the name Qaffāl) before taking up the study of *fiqh* at the age of thirty and going on to become the unique person of his age in *fiqh* and memorization. He died in the year 417 AH at the age of ninety.

its evidence then there are three opinions. The first is that it is permissible to give *fatwā* with it and it is permissible to imitate it, because it is connected to his knowledge just as it is connected for the scholar.⁸⁰ The second opinion is that it is permissible if its evidence is from the Book or the Sunna and not permissible if it is otherwise. The third opinion is that it is absolutely not permissible, and it is the most correct, and Allah knows best.

Section: Regarding the Rulings of the *Muftīs*; and There Are Several Issues

The first is that giving *fatwā* is a communal obligation, and thus if one is asked for a *fatwā* and there is no one else in the locality then answering is an individual obligation upon him. If there is someone else and both are present, then answering is a communal obligation with regards to both of them. If no one else is present,⁸¹ then there are two opinions, the most correct of which is that it is not an individual obligation due to what has already been mentioned from Ibn Abī Laylā.⁸² The second is that it is an individual obligation, and they are like the two opinions regarding testifying. If a layperson asks about something that hasn't happened,⁸³ then it is not obligatory to respond.

The second is that if he gives a *fatwā* regarding something and then goes back on it, [and] if the questioner knows that he went back on it and he has not yet acted upon it, then it is not permissible to act upon it; and the same would apply if the questioner got married based on his *fatwā* and remained married based on his *fatwā* and then he went back on it. In such a case he would have to separate from her. Likewise, if the *ijtihād* of the person one is imitating with regards to the direction of prayer changes during the prayer itself, or even if the action was done before he went back on it, if it contradicts decisive evidence then the questioner must nullify that action of his. If it is within the scope of *ijtihād* then it is not incumbent upon him to nullify it, because an *ijtihād* is not nullified by another *ijtihād*. This detail has been mentioned by al-Ṣaymarī, al-Khaṭīb and Abū 'Amr and they have agreed upon it, and I don't know of any differing opinion regarding it, and what al-Ghazālī and al-Rāzī⁸⁴ have

80. In other words, a layperson is a scholar of what he knows.

81. That is, based in the locality but not available at the moment.

82. Cf. the narration in which he consulted one hundred and twenty of the Helpers (*anṣār*).

83. That is, a hypothetical question.

84. Imam Fakhr al-Dīn al-Rāzī was the imam of his age in the rational sciences and one of the imams of the Revealed Law. He was born in Rayy, Persia in 544 AH. Arguably his most famous work is his multivolume *tafsīr*, entitled *Mafātīḥ al-ghayb*. He wrote several other brilliant works

mentioned does not contain a clear differing.

Abū ‘Amr said, “If he gave a *fatwā* based on the *madhhab* of his imam and he went back on it because it became decisively clear to him that it contravened the text of the *madhhab* of his imam, then it is obligatory to nullify the action, even if it is within the scope of *ijtihād*, because the text of the *madhhab* of his imam, as far as he is concerned, is like the text of the Lawgiver with regards to the independent *mujtahid*.” As for when the questioner doesn’t know that the *muftī* has gone back on his *fatwā*, the state of the questioner with regards to his knowledge is as it was before the *muftī* changed his mind, and the *muftī* must inform him before he acts upon it, and likewise afterwards since it would obligate nullification. If he acted upon his *fatwā* and it led to damage or destruction, and then his mistake became clear, and it contradicted that which is decisive, then according to al-Ustādh Abū Ishāq he must compensate (*yaḍmin*)⁸⁵ if he is someone qualified to give *fatwā*, and he doesn’t compensate if he is unqualified, because the questioner is the one who fell short.⁸⁶ This was likewise related by al-Shaykh Abū ‘Amr, and he didn’t comment on it, and it is obscure, and the compensation should be extracted based on the statements⁸⁷ of the deceiving party and those known⁸⁸ in the chapters of wrongfully taken property (*al-ghasab*)⁸⁹ and marriage (*al-nikāh*)⁹⁰, and others, or it is decisively affirmed that there is no compensation if there is nothing in the *fatwā* making it incumbent or compulsory.

The third is that it is unlawful to be negligent in giving *fatwā*, and if someone is known for doing so then it is unlawful to seek a *fatwā* from him. Being negligent includes not proceeding with caution, and hastening to give the *fatwā* before giving it its full right in terms of investigation and reflection. If he already knows the answer because he has been asked about it before, then there is no harm in answering promptly, and this

and was a fierce preacher against innovation and the cults, namely the Mu‘tazila, the Shī‘a, and the anthropomorphists. He died in Herat in present-day Afghanistan in 606.

85. That is, replace what was destroyed if it is fungible (e.g., dates) and replace its value if otherwise.

86. That is, the questioner is to blame because he asked someone who wasn’t qualified.

87. That is, their false or deceptive statements.

88. That is, the guilty parties.

89. For example, to offer to sell something which one wrongfully seized, and thus one would be selling that which isn’t one’s property.

90. For example, concealing infertility or chronic health issues until after the contract has been finalized.

is how what has been related regarding previous scholars answering promptly should be understood.

It is also from negligence for corrupt objectives to induce him to pursue unlawful stratagems, or disliked ones, and to cling to doubtful matters in order to get a concession for someone he wants to benefit, or to be strict towards someone he wants to harm. As for the one whose intention is sound, and he presumed that by seeking stratagems in which there are no doubtful matters that he would free someone from the predicament of an oath, then that is good and favourable, and this is how to understand what has been related from some of the first three generations that are like this, such as the statement of Sufyān: “Knowledge according to us is just concessions from a reliable person. As for strictness, everyone is good at it.” One of the stratagems that contain doubtful matters and are blameworthy is the *surayjiyya*⁹¹ stratagem used to prevent divorce.

The fourth is that one should not give *fatwā* in a situation in which his disposition has changed and his heart is preoccupied, and thus he is prevented from contemplation, such as anger, hunger, thirst, overwhelming sadness or joy, drowsiness, weariness, unpleasant heat, a painful illness, the need to relieve himself, or any other situation in which the heart is preoccupied and he is taken beyond the limit of temperance. If he gives *fatwā* in one of these states and he feels that he did not go beyond what is correct, then it is permissible, even though he was bold to do so.

The fifth is that the chosen position for the one who applies himself to *fatwā* is to do voluntarily, and it is permissible for him to take some provision from the Muslim treasury (*bayt al-māl*), unless it is an individual obligation upon him and not a communal, for the correct position is that it is unlawful. Furthermore, if he has some provision then the foundation is that he is not allowed to take a wage, and if he doesn't have any provision then he cannot take a wage from people of distinction that he gives *fatwā*

91. Attributed to the third century Shāfi'ī scholar Ibn Surayj, which is a situation in which a man says to his wife, “If I divorce you, then you are divorced prior to that three times.” Therefore, if he divorces her, is it regarded as a conditional tripartite divorce or does it count as a divorce at all? Ibn Surayj's opinion was that no divorce had taken place, because it is an impossible situation, as a man cannot divorce a woman after the third time, which is a final, irrevocable divorce. As Imam Ibn Qayyim al-Jawziyya explains, “Thus, its occurrence leads to its non-occurrence, and that which its existence leads to its non-existence never existed, and this is the chosen position of Abū al-ʿAbbās ibn Surayj, and a group of Shāfi'īs agreed with him, and it was rejected by the majority of jurists from the Malīkīs, Ḥanafīs, Ḥanbalīs, and most of the Shāfi'īs.” Please see *Iʿlām al-muwaqqiʿin ʿan Rabb al-ʿālamīn* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1411/1991), 3:197.

for, such as a ruler. Al-Shaykh Abū Ḥātim al-Qazwīnī,⁹² from amongst our companions, resorted to stratagems and said, “He can say, ‘It is incumbent upon me to give you a *fatwā* verbally. As for writing it down, then no.’” Therefore, if he pays him to write it down then it is permissible. Al-Ṣaymarī and al-Khaṭīb said, “If the people of a locality agree to give him provision from their own wealth on the condition that his time be completely free in order to give them *fatwā*, then it is permissible.” As for gifts, Abū Muẓaffar al-Sam‘ānī⁹³ said, “He can accept them, as opposed to the ruler, as his rule is necessary.” Abū ‘Amr said, “Accepting them should be declared unlawful if they are a means of bribery, that is, to get the *fatwā* that one wants, as in the case of a ruler, and the same goes for everything else for which nothing is accepted in return.”⁹⁴ Al-Khaṭīb said, “The Imam⁹⁵ must allocate for the one who has appointed himself to teach *fiqh* and give *fatwā* with regards to rulings that which will suffice him from any professional pursuit, and it should be from the Muslim treasury.” Then he narrated with his own chain of transmission that ‘Umar ibn al-Khaṭṭāb, Allah be pleased with him, would give every man who had this quality one hundred dīnārs a year.

The sixth is that it is not permissible to give *fatwā* with regards to oaths, the recognition of rights (*al-iqrār*), and other similar matters that are connected to expressions (*al-alfāz*), unless he is from the same locality as the speaker, or he has their rank of expertise regarding what is meant by their expressions and what is commonly known (*‘urf*) amongst them therein.

The seventh is that it is not permissible for the one whose *fatwā* are transmitted from the *madhhab* of an imam, when he relies on books,

92. Imam Abū Ḥātim al-Qazwīnī is a Shāfi‘ī scholar who descends from the Companion Anas ibn Mālik, Allah be pleased with him. He studied fiqh in Amol before moving on to Baghdad, where he attended the study circle of al-Shaykh Abū Ḥāmid. He was a memorizer of the *madhhab* and of differences of opinion, and he wrote several books on these subjects. He died in Amol, and according to al-Sam‘ānī it was in the year 440 AH, while al-Dhahabī says he died around the year 460, and Allah knows best.

93. Imam Abū Muẓaffar al-Sam‘ānī was a *faqīh* in the Shāfi‘ī *madhhab* and also knowledgeable in hadith. He was born in 537 AH and disappeared when the Tatars entered Merv in the year 617. It was not known at the time whether he was dead and shrouded or alive and expected to return.

94. E.g., a ruler has his own means of provision, say, from the public treasury, and thus does not need to be paid directly by the individuals from among his people for the services he does for them.

95. That is, the caliph.

to rely on other than a book whose veracity is trusted, in that it is the *madhhab* of that imam. If he is confident that the original copy of the written work bears this attribute but the copy he has is not reliable, then he must seek out other copies that are agreed upon, and confidence may be achieved, in some issues, in a copy that is not trusted if one sees that the speech is uniform, and he is an expert and intelligent and due to his experience he would notice if something had been omitted or altered. If he can't find it except in the copy that is not trusted then Abū 'Amr says that he should investigate. If he finds that it is consistent with the foundations of the *madhhab* and he is qualified to extract something like it in the *madhhab* in cases where he can't find anything transmitted, then he can give *fatwā* based on it. If he wants to relate it from the person who said it, then he does not say, "al-Shāfi'ī said such-and-such...." Rather, he should say, "According to al-Shāfi'ī, I found such-and-such....," or "it has reached me that according to al-Shāfi'ī...." If he is not qualified to extract something like it then it is not permissible for him. His job is merely to transmit, and he has not acquired that which would permit him to do the aforementioned. His job is to mention it and not in the form of a *fatwā*, clearly declaring his state by saying, "I found it in a copy of the book of so-and-so," or something similar.

I say: It is not permissible for a *muftī* upon the *madhhab* of al-Shāfi'ī, if he relies upon transmission, to be content with one or two written works, or something similar, from the books of the early scholars or most of the latter-day ones, due to the abundance of differing between them regarding that which is resolved and giving preference to one opinion over another; because this aforementioned *muftī* is transmitting the *madhhab* of al-Shāfi'ī, and he has not acquired confidence that what is in the two aforementioned books, or something similar, is the *madhhab* of al-Shāfi'ī, or that it is the preferred position when there is a difference of opinion, and this is something that is indisputable regarding those at the lowest levels of the *madhhab*. Indeed, an issue could be resolved according to ten written works but then irregular (*shādh*) according to the person who is preferred (*al-rājih*) in the *madhhab*, and he disagrees with the majority. Maybe he will disagree with the text of al-Shāfi'ī or several texts of his, and we will see in this commentary (*al-sharḥ*),⁹⁶ if Allah the Exalted so wills, examples of this. I hope that the completion of this book will allow one to be free of every other book and through it the *madhhab* of al-Shāfi'ī will be decisively known, if Allah the Exalted so wills.

The eighth is that if he gives *fatwā* regarding an incident and then

96. That is, *al-Majmū' sharḥ al-Muhadhdhib*, from whose introduction this text is gleaned.

an incident similar to it occurs, [and] if he remembers the first *fatwā* and its evidence—that is, according to the foundation of the Revealed Law if he is independent and according to his *madhhab* if he is attributed—then he gives *fatwā* regarding it without any further investigation. The most correct position is that it is obligatory to re-investigate, and it is similar to the judge when he gives a verdict based on *ijtihād* and then the issue occurs again, and likewise one renews one's search for water with regards to *tayammum*,⁹⁷ and one's *ijtihād* with regards to the prayer direction, and there are two opinions regarding these two. Al-Qāḍī Abī Ṭayyib⁹⁸ said in his remarks at the end of the chapter on facing the prayer direction, “And likewise the layperson, if an issue happens to him he should ask about it, and if it happens again it is incumbent upon him to ask a second time,” that is, according to the most correct position; and then he said, “unless it is an issue that happens often, and it would be difficult to keep asking about it. Thus, it would not be incumbent upon him, and asking about it the first time is sufficient due to the difficulty involved.”

The ninth is that one should not limit oneself when giving *fatwā* to saying, “There is a difference of opinion in this issue,” or “two positions,” or “two opinions,” or “two narrations,” or “that goes back to the opinion of the judge,” etc., as these are not answers. What the questioner is seeking is clarification that he can act upon, and thus one should give him a resolute answer that is the preferred opinion. If he doesn't know it then he should refrain until it is manifest or he should leave off giving *fatwā*, as was done by a group of senior Companions who refrained from giving *fatwā* with regards to a forgetful person who violates an oath.

Section: On the Etiquettes of *Fatwā*; and There Are Several Issues

The first is that the *muftī* must give a clear answer that removes any obscurity, and then he can restrict himself to answering orally. If he doesn't know the language of the questioner then it suffices him to have it translated by one reliable person, because it is a piece of information. He can also write down the answer, even though there is some risk in doing so. Al-Qāḍī Abū

97. That is, for each obligatory prayer.

98. Shaykh al-Islām al-Qāḍī Abū Ṭayyib al-Shāfi'ī al-Ṭabarī is known as the *faqīh* of Baghdad. Al-Shaykh Abū Ishāq said of him, “He is our shaykh and our ustādh. I have not seen anyone more perfect in *ijtihād*, more intense in verification and more insightful than him.” He also said, “He died at the age of 102 and his intellect had not deteriorated in the least and his understanding had not changed. He continued to issue *fatwā* and give judgments.” He was born in Amol in 348 AH and died in Baghdad in the year 450.

Ḥāmid⁹⁹ would often flee from giving *fatwā* on pieces of paper. Al-Ṣaymarī said, “It is not from etiquette for the question to be in the handwriting of the muftī. As for in his dictation and his correction, then it is allowed.” Al-Shaykh Abū Ishāq al-Shīrāzī would write the question on a piece of paper belonging to him and then he would write the answer. If there are several issues on the piece of paper, then the best thing is to arrange the answer according to the question; but if he doesn’t arrange it, then there’s no harm in that, and it resembles the meaning of Allah the Exalted’s statement: *...on a Day when faces are whitened and faces are blackened. As for those whose faces are blackened....*¹⁰⁰ If there is some detail in the issue then the answer is not to be dispatched, for that would be a mistake. Moreover, he can seek further details from the questioner if he is present, and write down the question on a piece of paper. Then he can answer, and that is foremost and safer. He can also limit himself to answering one of the questions if he knows that it is the questioner’s actual situation, and he says, “This is how it is if the case is such-and-such.”¹⁰¹ He can also break down the questions in his answer and mention the ruling for each question, but this was disliked by Abū al-Ḥasan from amongst the imams of the Mālikīs, and others, and they said, “This is teaching immoral people.” If the *muftī* can’t find the person who asked him, then he should break down the questions and work diligently to explain them and present them in detail.

The second is that he should not write the answer based on what he knows of the illustration of the event if it is not on the piece of paper that is presented to him. Rather, he should answer what is on the paper. If he wants to answer what isn’t on it, then he should say, “If the case is such-and-such, then the answer is such-and-such.” The scholars have recommended that one provide more in one’s answer than what is on the paper if it is related to what the questioner needs, based on the hadith: “Its water is purifying (*al-ṭuhūr*) and what dies therein is lawful to eat.”¹⁰²

99. This is al-Qāḍī Abū Ḥāmid al-Marwarīdhī, who is mentioned below. Al-Qāḍī Abū Ḥāmid took from Abū Ishāq al-Marwazī and also lived in Basra and studied with its *fuqahā*’. He was a peerless imam and wrote a commentary on Imam al-Muzanī’s *Mukhtaṣar* as well as his own book in Shāfi’ī *fiqh* called *al-Jāmi’*. He also wrote in the science of *uṣūl al-fiqh*. He died in the year 362 AH.

100. Q *Āl Imrān* 3:106; that is, Allah began by mentioning the faces that are whitened but when explaining He began with the faces that are blackened.

101. That is, sometimes a questioner appears to ask several questions at once but they are actually branch questions that stem from one fundamental question.

102. The full version of the hadith can be found in the *Musnad* of Imam al-Shāfi’ī (Beirut: Dār al-Kutub al-‘Ilmiyya, n.d.), 7, in which the

The third is that if the questioner has a hard time understanding, then he should be gentle with him, and be patient with understanding his question and making him understand his answer, for indeed his award will be abundant.

The fourth is that he should unequivocally contemplate the piece of paper, and the last part of it with certainty, for indeed the question is in the last part, and indeed all of it could be limited to one word at the end which is overlooked. Al-Ṣaymarī said, “One of the scholars said, ‘The way he deliberates with a simple issue should be the way he deliberates with a difficult issue, so that he gets used to it,’ and Muḥammad ibn al-Ḥasan¹⁰³ would do this.” If he finds a word that is ambiguous he should ask the questioner about it, as well as its pronunciation and vocalization. Likewise, if he finds a gross grammatical error, or a mistake, he changes it to that which is most suitable. If he sees a blank space in the middle of a line or at the end of it, he should draw a line over it, or fill it in, because maybe the questioner left it there to harm the *muftī*, by writing something in the blank space that would corrupt the *fatwā* after it had been given, as al-Qāḍī Abū Ḥāmid al-Marwarūdī was tried with.

The fifth is that it is recommended to read it out to those who are present from amongst those who are qualified to do so, and to consult them and discuss it with them with kindness and just treatment, even if they are less than him and his students, in order to emulate the first three generations. He should hope that whatever was hidden from him will be manifested, unless there is something therein that would be repulsive to bring out, or which the questioner would prefer not to be disclosed, or would cause some harm by being circulated.

The sixth is that he writes the answer in clear, medium handwriting, not delicate and hardly visible nor thick and coarse. He should not make the space between the lines too wide or too narrow, and the wording should be clear and sound such that the laity would understand, but at the same time would not be scorned by the elite. One of them recommended that one not change one’s pens or one’s handwriting for fear of forgery, and so that one’s handwriting is not doubted. Al-Ṣaymarī said, “Forgery is rarely

Messenger of Allah, Allah bless him and grant him peace, on the authority of Abū Hurayra, Allah be pleased with him, is asked by a sailor about performing *wuḍūʿ* with seawater. He didn’t ask about seafood but the Messenger of Allah, may Allah bless him and grant him peace, mentioned it because it was related to something that the questioner needed.

103. This is Muḥammad ibn al-Ḥasan al-Shaybānī, one of the two companions of Imam Abū Ḥanīfah, the other being al-Qāḍī Abū Yūsuf. He is also one of the teachers of Imam al-Shāfiʿī. He died in the year 189 AH.

discovered with regards to a *muftī*, because Allah the Exalted guards the affair of the religion.” Once he has written his answer he should look over it for fear of any shortcoming that may have occurred therein, or an infringement of some of what he was asked about.

The seventh is that if he is a beginner, then the custom of old and until today is to write towards the left of the page. Al-Ṣaymarī and others have said, “And wherever he writes, from the middle of the page or in its margins, he is not censured for it.” By no mean should he write above the *basmala*,¹⁰⁴ and he should supplicate if he wants to give *fatwā*. It has come from Makḥūl¹⁰⁵ and Mālik, Allah have mercy on him, that they would not give a *fatwā* until they had said, “There is no strength or power except in Allah.” It is recommended to seek refuge from Shayṭān and start with the name of Allah, to praise him and to send prayers upon the Prophet, may Allah bless him and grant him peace. Then he should say: “O Lord, *expand my breast...*” (Q *Ṭā-hā* 20:25) and the rest of the supplication in the verse¹⁰⁶ and that which is similar. Al-Ṣaymarī said, “The habit of many is to begin their *fatāwā* with, “The answer, and with Allah is every success...,” while others have omitted it. If he does that for a long list of issues that includes sections and he omits it elsewhere then that is a way of doing things.

I say: The chosen position is that one should say that absolutely, and it is best to begin by saying, “Praise be to Allah” (*al-ḥamdu lillāh*), due to the hadith, “Every important matter that is not started with *al-ḥamdu lillāh* is cut off.”¹⁰⁷ He should say it with his tongue as well as write it. Al-Ṣaymarī said, “He should not omit concluding his answer by saying, ‘And with Allah is every success’, or ‘and Allah knows best’, or ‘and Allah is the One Who grants success.’” He also said, “It is not repulsive for him to say, ‘The answer according to us...’, or ‘According to us...’, or ‘What we say is...’, or ‘What we go with is...’, or ‘Our opinion is...’, etc., because he is someone qualified to do so.” He also said, “If the questioner omits supplicating for the *muftī* or sending prayers upon the Messenger of Allah, Allah bless him and grant him peace, then the *muftī* should add it at the end of the *fatwā* in his own handwriting, for it is the custom to do so.”

104. That is, the words *bismillāh al-Raḥmān al-Raḥīm*.

105. Makḥūl al-Hudhalī Abū ‘Abdillāh al-Shāmī is a Follower who died in the year 112 AH. He was a memorizer, *faqīh*, and hadith scholar who was called the scholar of the people of the Levant, and this was at a time when al-Ḥasan al-Baṣrī was the scholar of Basra, Sa‘īd ibn Musayyib was the scholar of Madina and al-Sha‘bī was the scholar of Kufa.

106. The rest of the supplication is: “and make my task easy for me. Loosen the knot in my tongue so that they will understand my words.”

107. That is, cut off from blessings. This hadith has been related by Abū Dāwūd and others.

I say: Once he has concluded his answer by saying, “And Allah knows best,” or something similar from what has been mentioned, he should then write after that, “Written by so-and-so,” or “so-and-so the son of so-and-so from such-and-such place” (*fulān bin fulān al-fulānī*), and he is thus attributed to what is known about him, such as a tribe, a locality¹⁰⁸ or an attribute. Then he says, “al-Shāfi‘ī” or “al-Ḥanafī,”¹⁰⁹ for example. If he is well-known by a certain name or something else then there is no harm in shortening it. Al-Ṣaymarī said, “Some of them have held the opinion that the *muftī* should write in *midād* as opposed to *ḥibr*¹¹⁰ for fear of it being rubbed out.” He also said, “What is recommended is *ḥibr* and nothing else.”

I say: Neither of them is specifically recommended, as opposed to books of knowledge, because they are written to last longer and *ḥibr* is longer lasting. Al-Ṣaymarī said, “If he attaches the *fatwā* to the ruler he should supplicate for him, by saying: ‘And upon the one in charge of our affairs...’ or ‘the ruler, may Allah rectify him...’, or ‘may Allah guide him’, or ‘may Allah strengthen his resolve’, or ‘may Allah rectify through him’, or ‘may Allah increase his strength’. He should not say, ‘may Allah grant him a long life’, for this is not from the expressions of the first three generations.”

I say: Abū Ja‘far al-Naḥḥās¹¹¹ and others have transmitted the agreement of the scholars regarding the fact that it is disliked to say, “May Allah grant you a long life.” One of them said that it is the greeting of the *zanādiqa*.¹¹² In *Ṣaḥīḥ Muslim*, in the hadith of Umm Ḥabība,¹¹³ Allah

108. For example, Imam al-Nawawī is called such because he hails from the town of Nawā, which is in modern-day Syria.

109. That is, he mentions the *madhhab* that he follows as part of his name.

110. Both of these terms, namely *midād* and *ḥibr*, refer to ink, one being longer-lasting than the other.

111. Abū Ja‘far al-Naḥḥās is an Egyptian grammarian who was born in Fustāt, where he studied with the local scholars before moving to Baghdad to further his studies. He later returned to Fustāt to teach and became one of the leading grammarians in the land. He died there in the year 338 AH.

112. Usually translated as ‘atheists’ or ‘heretics’, but the precise meaning is those who believe that the world is eternal. Please see *Mu‘jam al-wasīṭ* (Beirut: Dār al-Fikr, 1998), s.v. *z-n-d-q*.

113. The Mother of the Believers, Umm Ḥabība Ramla bint Abī Sufyān, Allah be pleased with her, was the wife of the Messenger of Allah, Allah bless him and grant him peace, the daughter of Abū Sufyān and the sister of Mu‘āwiyah. She died in the year 44 AH and is buried in al-Baqī‘ cemetery in Madīna.

be pleased with her, there is an indication that the priority is to leave off supplications like this that ask for a long life.¹¹⁴

The eighth is that he should keep his answer brief, and be understandable for the laity. The author of *al-Hāwī* said, “He should say that it is permissible or not permissible, or true or false.” His shaykh, al-Ṣaymarī, related from his shaykh, al-Qāḍī Abū Ḥamid, that he would make his answers as short as possible; he was once asked about an issue and at the end it said, “Is it permissible or not?” He wrote, “No, and with Allah is every success.”

The ninth is what has been stated by al-Ṣaymarī and al-Khaṭīb: “If he is asked about someone who said, ‘I am more truthful than Muḥammad the son of ‘Abdullāh’,¹¹⁵ or ‘Prayer is a game’, or something of that nature, he should not rush to say, ‘This person’s blood is lawful’, or ‘This person must be killed’. Rather, he should say, ‘If this is true and has been confirmed or there is clear evidence then the ruler should ask him to repent. If he repents then his repentance is accepted. If he doesn’t repent then the ruler does such-and-such, and does his utmost to fulfil his duties.’”¹¹⁶ He said, “If he is asked about someone who said something of which part could be blasphemous,¹¹⁷ he should say, ‘The person who said this should be asked. If he says that what he meant was such-and-such then the answer is such-and-such.’ If he is asked about someone who has committed murder, or plucked an eye out, or something else, he should be cautious and then mention all the conditions that would necessitate retaliation (*al-qisās*). If he is asked about someone who has done something that would necessitate reprimand (*al-ta‘zīr*) he should mention how he is to be reprimanded, by saying, ‘The ruler should whip him such-and-such, and not more than such-and-such.’” This is the speech of al-Ṣaymarī, al-Khaṭīb and others. Abū ‘Amr said, “If retaliation or reprimand has been prescribed for him based on its condition, then that is not absolute.

114. Umm Ḥabība, Allah be pleased with her, said, “O Allah, grant a long life to my husband, the Messenger of Allah, Allah bless him and grant him peace, to my father, Abū Sufyān, and to my brother, Mu‘āwiya.” The Prophet, Allah bless him and grant him peace, said: “You have asked Allah, Mighty and Majestic, regarding lifespans that have been determined, days that have been numbered, and provisions that have been distributed, and He will never hasten anything before its time or defer it beyond its time. If you had asked Allah to protect you from any punishment in the Fire or from any punishment in the grave that would have been better.” *Ṣaḥīḥ Muslim bi-sharḥ al-Nawawī* (Beirut: Dār al-Kutub al-‘Ilmiyya, 2003), 16:174.

115. That is, the Messenger of Allah, Allah bless him and grant him peace.

116. See Nuh Ha Mim Keller, *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law* (Beltsville, Maryland: Amana Publications, 1999), section 8.0, 595-598.

117. That is, *kufr*.

Rather, it is restricted by its condition, and the ruler asks about its condition, and clarification of his state is more important.”

The tenth is that if there is not much space to write the answer he should not write it on another piece of paper, for fear of trickery. This is why they have said, “He should make his answer reach the last line, and not leave a space for the questioner to add something that may corrupt it. If the space designated for the answer is a piece of paper that has been stuck together with an adhesive, he should write over the adhesive, and if there is not enough space on the inside of the paper he should write the answer on the outside, and write it on the top unless he is starting from the bottom, connecting it to the question. Thus, the space is restricted and he completes it on the bottom of the outside so that his answer is connected.” The chosen position of one of them is that he write on the outside and not in the margins. The chosen position according to al-Ṣaymarī and others is that the margin takes priority over the outside. Al-Ṣaymarī and others have said, “The matter therein is close.”

The eleventh is that if it becomes clear to the *muftī* that the answer will not match the objective of the questioner, and that he would not be pleased with him writing it on his piece of paper, he should limit himself to answering him orally, and let him be warned against inclining in his *fatwā*, either towards the questioner or his antagonist, and the means of inclination are many and not hidden. One of them is that one writes in the answer that which is in his favour but omits that which isn't. He cannot get involved in issues of claims and clear proofs¹¹⁸ as if he is someone who is completely impartial. If one of them asks him and says, “Based on what do such-and-such claims proceed?,” or, “such-and-such and clear proofs?,” he should not answer for fear of some right be nullified. He can ask him about his state with regards to what he's claiming, and if he explains it to him then he can identify for him that which supports the claim and that which doesn't. Al-Ṣaymarī said, “If the *muftī* sees a way out for the questioner, he should guide him to it and point it out to him,” meaning something that will not harm anyone else without right. He said, “For example, someone who swears an oath that he will not spend on his wife for one month. He should tell him to give to her from her dowry, or a loan or a sale and he will pay her back later, and this is similar to what has been related about a man who said to Abū Ḥanīfa, Allah have mercy on him, ‘I swore an oath that I would have sexual intercourse with my wife during the day in Ramaḍān and not carry out any expiation nor commit any disobedience.’ He replied, “Travel with her.”¹¹⁹

The twelfth is that al-Ṣaymarī said, “If the *muftī* sees that the benefit

118. See the thirty-third hadith in *al-Arbaʿīn al-Nawawīyya*.

119. That is, because travelling would provide them both with an excuse not to fast.

would lie in giving a harsh *fatwā* to the layperson, and the *muftī* does not believe in its outward import but it can be interpreted, then that is permissible to deter the layperson. For example, it has been related on the authority of Ibn ‘Abbās, Allah be pleased with both of them, that he was asked about the repentance of a murderer. He said, “There is no repentance for him.”¹²⁰ Someone else asked him and he said, “There is repentance for him.” He then said, ‘As for the first person, I saw in his eyes a desire to kill, so I prevented him. As for the second, he came submissively because he had killed so I didn’t want to drive him to despair.’” Al-Ṣaymarī said, “If a man asks him by saying, ‘If I kill my slave, will retaliation (*al-qīṣās*) be binding with regards to me?’, it is permissible for him to say, ‘If you kill your slave then we will kill you.’ It has been related from the Prophet, Allah bless him and grant him peace, that he said, “We will kill whoever kills his slave.”” This is also because killing has meanings. He said, “If he were to be asked about whether insulting a Companion would necessitate being killed, it is permissible for him to say, ‘It has been related from the Messenger of Allah, Allah bless him and grant him peace, that he said, “If someone curses a Companion of mine, kill him.”’ All of this is done to deter the layperson, and those who lack in their religion and respectability.”¹²¹

The thirteenth is that when the *muftī* has several papers in his presence he must give precedence based on first come first served, just as a judge does with regards to lawsuits. And this concerns that for which a *fatwā* must be given. If they are all the same, or he doesn’t know which one came first, then precedence is given based on drawing lots. The correct position is that it is permissible to give precedence to a woman and a traveller who has had a difficult journey, and delaying him would hold him back from his travel group, and similar matters that would make it understandable to give them precedence. This is unless there are so many travellers and women that others would be greatly harmed by them being given precedence, so in that case he should revert to first come first served or draw lots. Then he should not give precedence to anyone unless it is just one *fatwā*.

The fourteenth is that al-Ṣaymarī and Abū ‘Amr said, “If he is asked about inheritance then it is not the custom to stipulate that in order for someone to inherit they must not be a slave, a disbeliever or the killer of the deceased, or other preventives of inheritance. This is already understood, as opposed to dealing with a case in which there are brothers, sisters, uncles, and their children. In such a case he must say in his answer, ‘From a father and

120. That is, there is no means for him to redeem himself before Allah.

121. The two hadiths being quoted are weak but can be used for such a purpose.

mother...’, or ‘From a father...’ or ‘From a mother...’” If he is asked about an issue of *‘awl*¹²² such as *al-minbariyya*,¹²³ which is when the deceased leaves behind a wife, both parents and two daughters, he should not say that the wife gets an eighth, or a ninth, because this was not stated by anyone from the first three generations. Rather, he should say that she has an eighth based on *‘awl* and it is three shares out of twenty-seven, or simply that she has three shares out of twenty-seven. Or, he can say what the Commander of the Believers, ‘Alī ibn Abī Ṭālib, Allah be pleased with him, said, “Her eighth is a ninth.” If amongst those mentioned on the question paper are some people who will not inherit, then he should make that clear, and say, “So-and-so will not inherit.” If the person’s lack of inheritance is only in some cases and not others, then he should say, “So-and-so will not inherit in this case,” or something similar so that it is not imagined that the person can never inherit by any means.¹²⁴

If he is asked about brothers and sisters or sons and daughters then he should not say, “A male receives the same as the share of two females,”¹²⁵ because that could be confusing for a layperson. Rather, he should divide the inheritance into however many shares and then say that each male gets such-and-such share and each female gets such-and-such share. Al-Ṣaymarī said, “al-Shaykh said, ‘We find that in deliberately refraining from it there is hatred within oneself; because it is the words of the Mighty Qur’ān,¹²⁶ and how rarely is its meaning hidden from anyone. In answering issues of *munāsakhāt*¹²⁷ he should be especially cautious and on his guard.

122. That is, a situation in which the number of shares are increased while the amount of each share is decreased. See *al-Raḥbiyya fī ‘ilm al-farā’id bi-sharḥ Sabṭ al-Mardīnī wa ḥāshiyat al-‘Allāma al-Baḡrī* (Damascus: Dār al-Muṣṭafā, 1429/2008), 242-246, for further details.

123. Called such because Imam ‘Alī ibn Abī Ṭālib, Allah be pleased with him, discussed it on the pulpit (*minbar*).

124. This issue is discussed under the chapter on *ḥajb*, which is either *ḥajb nuqsān* or *ḥajb ḥirmān*. The former refers to when an inheritor receives less because of someone else, such as a husband receiving a quarter instead of a half because of the existence of a son. The latter refers to when an inheritor receives nothing because of someone else, such as a grandson receiving nothing because of the existence of a son. See *al-Raḥbiyya*, 83-89, for further details.

125. See *Q al-Nisā’* 4:11.

126. That is, there is little room for *ijtihād* in inheritance because it is mostly in the Qur’ān, namely *Q al-Nisā’* 4:11-12, as well as verse 176. Thus, a *muflī* would especially hate to get something wrong.

127. This refers to a situation in which a person dies, and before his inheritance has been divided one of his inheritors also dies, and thus the division of the first person’s inheritance is affected. Cf. *al-Raḥbiyya*, 133-139.

He should say therein that so-and-so gets such-and-such inheritance from his father, then from his mother, then from his brother.” Al-Şaymarī said, “Some of them would choose to say that so-and-so gets such-and-such share; his inheritance from his father is such-and-such, from his mother such-and-such and from his brother such-and-such.” He also said, “All of that is close.” Al-Şaymarī and others have said, “It is good to say that the division of the inheritance is after what must be given precedence, such as debts or bequests (*al-waṣīyya*), if there are any.”

The fifteenth is that if the *muftī* sees handwriting on the question paper from someone else who is qualified to give *fatwā*, and what he has written therein agrees with his own opinion, then al-Khaṭīb and others have said, “Underneath his handwriting he should write, ‘This is a correct answer and it is my position’, or he can write, ‘My answer is the same’. If he wants, he can mention the ruling in a more concise manner than that of the other *muftī*.” As for when he sees handwriting therein from someone who is not qualified to give *fatwā*, then al-Şaymarī has said, “He does not give *fatwā* alongside him, because that would be an affirmation on his behalf for something that is reprehensible (*munkar*).¹²⁸ Instead, he should strike it out with the permission of the owner of the paper, and even if he doesn’t ask his permission it is still permissible, but he should not hold on to the paper unless he has the owner’s permission.” He also said, “He can rebuke and reprimand the questioner and explain to him the ignominy of what he did, and that it is an obligation upon him to look for someone who is qualified to give *fatwā* and seek out those who are qualified to do so.” If he sees therein the name of someone he doesn’t know he should ask about him. If he doesn’t know him then he is allowed to refrain from giving *fatwā* alongside him for fear of what we have just mentioned. He also said, “In this situation, one of them would write on the back of the paper.” He also said, “The priority in situations like these is that the owner is shown that the *fatwā*¹²⁹ will be replaced, and if he refuses then he should answer him orally.”

Abū ‘Amr said, “If he fears some tribulation (*fitna*) as a result of striking out the *fatwā* of the one who isn’t qualified and there is no mistake that would make one refrain from giving *fatwā* alongside him, then if his *fatāwā* have become predominant due to him taking over such a position based on rank,¹³⁰ or deception, or something else, such that the

128. In this case, an unqualified person giving *fatwā*.

129. That is, his own *fatwā* will replace the other *fatwā*.

130. For example, someone might be appointed *muftī* over a jurisdiction due to family connections and the like, and not necessarily because they are qualified.

questioners would be harmed if the qualified *muftī* refrained from giving *fatwā* alongside him, then he should give *fatwā* alongside him, for indeed that is the lesser of two evils. He should also be wary of manifesting the other person's shortcomings¹³¹ to those who are unaware of it. As for when he finds a *fatwā* from someone who is qualified but it is completely wrong because it contravenes decisive proof, or it is an unquestionable mistake according to the *madhhab* of the one giving the *fatwā*, then it is not permissible for him to refrain from giving *fatwā* and not draw attention to the mistake if there is no one else who will do it. Rather, he must strike it out when possible or replace it, and cut up the piece of paper with the owner's permission, or something similar. If he is not able to and no one else will do it then he should write the correct answer next to the mistake. Furthermore, if the one who made the mistake is qualified to give *fatwā* then it is good to send it back to him with the owner's¹³² permission. As for when he finds therein a *fatwā* of someone who is qualified and it differs from his own opinion without being decisively wrong,¹³³ then he simply writes his own answer without objecting to the other *fatwā* by declaring it wrong or rebutting it." The author of *al-Ḥāwī* said, "It is not acceptable for a *muftī*, when he is asked, to object to someone else's answer by rebutting it, nor should he declare it wrong. Rather, he should answer and give his own opinion, regardless of whether it agrees or disagrees."

The sixteenth is that if the *muftī* does not understand the question at all and the person who experienced the event is not present, then al-Ṣaymarī says, "He should write that he needs more elucidation in order to give an answer, or that he doesn't understand the contents sufficiently in order to answer." He also said, "One of them held the position that he shouldn't write anything at all." He also said, "I have seen one of them write regarding this that the questioner should be present so that they can address him orally." Al-Khaṭīb said, "If he doesn't understand how to answer then he should guide the questioner to another *muftī* if there is one, and if there isn't then he should refrain until he knows the answer." Al-Ṣaymarī said, "If there are several issues on the question paper and he understands some of them and not others, or he understands all of them and doesn't want to answer some of them, or he needs to contemplate or further examine some of them, then he answers the ones he wants to and remains silent regarding the rest. He should say, 'Regarding the rest, we need to investigate,' or 'contemplate', or 'investigate further.'"

The seventeenth is that it is not reprehensible for the *muftī* to mention

131. That is, that he is not a qualified *muftī*.

132. That is, of the paper.

133. That is, the other *fatwā* has legitimate proofs, etc.

the proof in his *fatwā* if it is a brief, clear text. Al-Ṣaymarī said, “He does not mention the proof if he is giving *fatwā* to a layman and he does mention it if he is giving *fatwā* to a jurist, such as someone asking about getting married without a guardian, in which case it is good to say the Messenger of Allah, Allah bless him and grant him peace, said, “There is no marriage except with a guardian” (*la nikāḥ illā bi walī*),¹³⁴ or about taking back (*al-rajʿa*)¹³⁵ a divorced wife after consummation of the marriage. One should state that he can take her back, and that Allah the Exalted has said, *Their husbands have the right to take them back within that time* (Q *al-Baqara* 2:228).” He also said, “It is not a customary habit for one to mention the method of *ijtihād* in his *fatwā*, the direction of the analogy,¹³⁶ or the inference (*al-istidlāl*), unless the *fatwā* is connected to the paying back of a loan, in which case he indicates the method of *ijtihād* and makes it brilliantly incisive. The same applies if someone else gives a *fatwā* and there is an error in it, in which case he does so in order to draw attention to what he is going with, even if there is some obscurity in that which he is giving *fatwā* about. Thus, it is good to make it shine with its proofs.”

The author of *al-Ḥāwī* said, “He doesn’t mention the proof so that there can be a difference between *fatwā* and writing books. If one accepts to overstep a little bit one will accept to overstep a great deal, and the *muftī* will become a teacher.” The details that we have mentioned take precedence over the absolute restraint of the author of *al-Ḥāwī*. In certain circumstances the *muftī* may need to intensify and go to greater lengths, and thus say, “This is the consensus of the Muslims,” or “I don’t know of any difference of opinion regarding this,” or “whoever goes against has gone against what is obligatory, and deviated from the correct position,” or “he has sinned and committed iniquity,” or “the ruler must adopt this and not neglect the matter,” and other similar expressions depending on what benefit requires and what the situation necessitates.

134. Found in the collections of Ibn Ḥibbān, Abū Dāwūd, and al-Tirmidhī.

135. According to the Revealed Law, this means the return of a woman who is in her waiting period from an unfinalized, non-threelfold divorce to the state of marriage; see Keller, *Reliance*, 564-565, for further details.

136. That is, *mafḥūm al-muwāfaqā* and *mafḥūm al-mukhālafa*. The former refers to a situation in which the understanding can be taken further in the same direction. For example, in Q *al-Isrāʾ* 17:23, Allah commands the believers not to say *uff* to their parents out of irritation. If this is forbidden, then obviously it is forbidden to verbally or physically assault them. The latter refers to the opposite understanding. For example, Q *al-Ḥujurāt* 49:6 commands the believers to carefully scrutinize any report that comes from an iniquitous person, which means that if a report comes from an upright person then scrutiny is not obligatory.

The eighteenth is what al-Shaykh Abū ‘Amr, Allah have mercy on him, has said, “If he is asked about issues of scholastic theology (*al-kalām*), then it is not for him to give a *fatwā* in detail. Rather, he should forbid the questioner and the rest of the laity from delving into that, or even a bit of it, even if it is small, and he should command them to limit themselves to faith (*al-īmān*) in general without going into detail, and that they say therein and with regards to every verse that discusses the attributes¹³⁷ and the reports about them that are allegorical (*mutashābihā*): ‘Indeed we affirm what they contain and in a way that is befitting of Allah’s Majesty, Blessed and Exalted is He, as well as His Perfection and absolute Sanctification’. Then one should say, ‘This is our belief regarding them and it is not obligatory upon us to go into details and specifics, nor is it our job to look into it. Rather, we entrust the knowledge of its details to Allah, Blessed and Exalted, and we turn our hearts and our tongues away from delving into it.’ This and similar statements is the correct position from the imams of *fatwā* in this regard, and it is the way of the first three generations of this Umma, the imams of the considered *madhhabs*,¹³⁸ the great scholars and the righteous, and it is more prudent and safer for the laity and those like them.

If one of them holds a false belief in some issue of detail then he should guide him away from that false belief with that which is more prudent, simpler and safer. If the ruler reprimands whoever deviates from amongst them, then he is following the example of ‘Umar ibn al-Khaṭṭāb, Allah be pleased with him, as he reprimanded Ṣabī’, who used to ask about verses and reports that were open to interpretation. He also said, “The scholastic theologians (*al-mutakallimūn*) from amongst our companions acknowledge the veracity of this method, and that it is safer for the one whom it is laid down for.” Al-Ghazālī was amongst them towards the end of his life: going to the greatest lengths in calling towards it and demonstrating it; and his shaykh, Imam al-Ḥaramayn, mentioned in his book, *al-Ghiyāthī*, that the Imam¹³⁹ should strive as much as possible to gather the laity of the creation upon the way of the first three generations in that regard.

Al-Ghazālī was asked about the speech of Allah, Blessed and Exalted is He, and part of his answer was, “As for delving into the Exalted’s Speech as to whether or not it consists of letters and sounds, this is innovation (*bid‘a*), and whoever calls the laity to delve into this is not from the imams of the religion. Rather, he is one of those who leads astray, and he is like someone who invites children who can’t swim well to swim in the deepest

137. That is, of Allah.

138. That is, the four *madhhabs* of Muslim orthodoxy.

139. That is, the caliph.

parts of the sea, or someone who invites a chronically ill, infirm person to travel through open country without a means of transport.” He said in one of his letters, “The correct position is for all of creation, apart from that rare, unique person whom each age only allows one or two to exist in, to travel the path of the first three generations in having the faith that has been revealed and affirming in general everything that has been revealed (*al-īmān al-mursal wal-taṣḍīq al-mujmal*)¹⁴⁰ by Allah the Exalted and informed of by the Messenger of Allah, Allah bless him and grant him peace, without research or investigation or being preoccupied with *fatwā*, for that contains work for the one who is preoccupied with it.”¹⁴¹

Al-Ṣaymarī said in his book *Adab al-muftī wal-mustaftī*, “What the people of *taqwā* have made consensus on is that this is not befitting of someone who is characterized by giving *fatwā* in *fiqh*.” In another copy: “It is not permissible for him to write any *fatwā* concerning issues of scholastic theology.” He also said, “One of them would not even finish reading question papers like that.” He also said, “One of them would dislike to write, ‘This is not from our knowledge,’ or ‘We have not gathered for this,’ or ‘Asking about something else would be better.’ Rather, he wouldn’t subject himself to any of that.”

The imam, the ḥāfiẓ, the jurist, Abū ‘Umar ibn ‘Abd al-Barr,¹⁴² has related refrainment in all of that from the jurists and the scholars, of old and until today, from the people of hadith and of *fatwā*. He said, “The only people who go against that are the people of innovation.” Al-Shaykh said, “If the issue is one from which none of the aforementioned harms of delving is feared, [and] if one answers in detail, then it is permissible to answer in detail, and that is by the answer being short and understandable and not having any parts that would attract those who like to dispute, the question is from someone who is seeking to be guided and to be lead and he is from a people who don’t often argue and dispute, and the *muftī* is someone whose *fatāwā* are obeyed.” This

140. This, for example, would mean believing and affirming that angels exist, and even though one may later discover that there is an angel made of fire and ice who glorifies Allah by saying, “Glorified be the One Who made me from fire and ice,” that would not mean that one’s faith was deficient in any way. Rather, one’s general faith was always sufficient. For further details on this angel, please see Imam al-Suyūṭī’s *al-Ḥabā’ik fī akhbār al-malā’ik* (Damascus: Dār al-Kitāb al-‘Arabī, 1403/1983), 132-135.

141. That is, it is for the scholastic theologians to deal with this and not the laity.

142. Imam Abū ‘Umar Yūsuf ibn ‘Abdul Barr, a famous Mālikī hadith scholar from Andalusia, is known as the Ḥāfiẓ of the West, just as al-Khaṭīb al-Baghḍādī is known as the Ḥāfiẓ of the East. He was born in the year 368 AH and died in the year 463.

and similar matters is how to understand what has come to us regarding some of the first three generations giving certain *fatāwā* regarding certain issues of scholastic theology, and that was rare and seldom on their part, and Allah knows best.

The nineteenth is what al-Ṣaymarī and al-Khaṭīb, Allah have mercy on them, said, “If a jurist is asked about an issue concerning the exegesis (*tafsīr*) of the Mighty Qurʾān, if it is connected to rulings, then he should answer it, and he should write with his own handwriting; such as someone asking about the middle prayer (*al-ṣalāt al-wuṣṭā*)¹⁴³, or periods (*qurūʾ*)¹⁴⁴, or the one in charge of the marriage contract (*biyadihi ʿuqdat un-nikāh*).¹⁴⁵ If it’s not from the issues of rulings, such as a question about *al-raḡīm*,¹⁴⁶ *al-naḡīr*,¹⁴⁷ *al-qatmīr*,¹⁴⁸ or *al-ghislīn*,¹⁴⁹ then he refers it to its people and entrusts it to those who have appointed themselves to be from the people of exegesis, and if he answers him orally then it is not reprehensible.” This is the speech of al-Ṣaymarī and al-Khaṭīb, and if it were said that it would be good to write it for the jurist who knows it, then that’s good, and what difference is there between that and the issues connected to rulings? And Allah knows best.

Section: On the Etiquettes of the Questioner (*al-mustaftī*), His Description, and His Rulings; and There Are Several Issues

The first of them is regarding the description of the questioner. Anyone

143. This can be found in *Q al-Baqara* 2:238. According to the Mālikīs—e.g., *Matn al-risāla* by Imām Ibn Abī Zayd al-Qayrawānī (Casablanca: Dār al-Rashād al-Ḥadītha, 1431/2010), 24—it is the dawn (*ṣubḥ*) prayer; while according to the Ḥanbalīs it is the mid-afternoon (*ʿaṣr*) prayer—e.g., *al-Rawḍ al-murbiʿ* by Imām Maṣṣūr al-Bahūtī (Beirut: Dār al-Kutub al-ʿArabī, 1406/1986), 66. As for the Shāfiʿīs, Imām al-Shāfiʿī himself and others scholars in the *madhhab* have held it to be *ṣubḥ*, while Imāms al-Nawawī and al-Māwardī have held it to be *ʿaṣr*, and thus that would be the preferred (*rājiḥ*) position in the *madhhab*. Cf. al-Ramlī, *Nihāyat al-muḥtāj* 1:235; al-Shirbinī, *Mughnī al-muḥtāj* 1:303; and also Imām al-Nawawī’s discussion in *Ṣaḥīḥ Muslim bi-sharḥ al-Nawawī* 5:108-113.

144. Found in *Q al-Baqara* 2:228. According to the Shāfiʿīs (al-Nawawī, *Minhāj al-ʿālibīn*, 445) and the Mālikīs (al-Qayrawānī, *Matn al-risāla*, 96) it is three periods of purity, while according to the Ḥanbalīs (*al-Rawḍ al-Murbiʿ*, 462) it is three menstrual cycles.

145. Found in *Q al-Baqara* 2:237.

146. *Q al-Kahf* 18:9.

147. *Q al-Nisāʾ* 4:53 and 124.

148. *Q Fāṭir* 35:13.

149. *Q al-Hāqqa* 69:36.

who has not reached the level of *muftī* is, with regards to the rulings of the Revealed Law that he asks about, a questioner who imitates the one who gives him *fatwā*. The chosen definition of imitation (*al-taqlīd*) is that one accepts the position of someone who could be persistently wrong without any proof of the source that would make his position acceptable. If something happens to him regarding which he must know the ruling, then he has to ask for a *fatwā*. If he can't find anyone to ask in his locality then he must travel to someone who can give him a *fatwā*, even if he lives far away. Some of the first three generations would travel for days and nights for the sake of one issue.

The second is that he must decisively search for someone known to be qualified whom he can ask for a *fatwā*. If he doesn't know him to be qualified then it is not permissible for him to seek a *fatwā* from someone who is affiliated with knowledge and has been appointed to teach, have people read to him and other positions held by scholars simply because of their affiliation and their appointment to that position. It is permissible to seek a *fatwā* from someone who is well-known for being qualified for giving *fatwā*.

One of our latter-day companions said, "He should only rely on his statement, 'I am qualified to give *fatwā*', not his reputation, nor does it suffice that he is well-known and constantly spoken about (*al-tawātur*), because being well-known and having a reputation amongst the laity is not something reliable, and the very foundation of it could be fraud. As for being spoken about constantly, this does not indicate knowledge unless it is based on something known and tangible." The correct position is the former, because his engaging in *fatwā* informs us that he is qualified, for indeed the outward form is presumed with regards to the one whose religiosity is trusted. It is also permissible to seek a *fatwā* from someone whom the well-known, aforementioned person has told us is qualified. Al-Shaykh Abū Ishāq, the author,¹⁵⁰ as well as others, have said, "It is acceptable if one upright person informs that he is qualified." Abū 'Amr said, "We should stipulate for the one who reports that he have knowledge and insight that enables him to distinguish that which is dubious from that which isn't, and one should not rely therein on the information of a few laypeople due to the frequency in which they are deceived." If two or more gather from amongst those one is permitted to seek a *fatwā* from, is one thus obliged to employ personal reasoning as to which of them is most knowledgeable, and to search for the most knowledgeable, most careful (*al-awra'*), and most trustworthy of them so that he can imitate him and no one else? There are two opinions:

The first is that it is not obligatory. Rather, he asks whichever one

150. That is, Imam Abū Ishāq al-Shīrāzī, the author of *al-Muhadhdhib*, of which Imam al-Nawawī's *al-Majmū'* is a commentary.

of them he wants, because they are all qualified, and we have removed personal reasoning from the laity. This opinion is the correct one according to our Iraqi companions. They have said, “It is the position of most of our companions.”

The second is that it is obligatory, because this amount of personal reasoning would enable him to research and ask and look at evidences of states. This opinion is the position of Abū al-‘Abbās Ibn Surayj, the chosen position of al-Qaffāl al-Marwazī, and it is correct according to al-Qāḍī Ḥusayn.¹⁵¹ The first is the most prominent,¹⁵² and it is prominent from the state of the early scholars. Abū ‘Amr, Allah have mercy on him, said, “However, when he becomes aware of who is more trustworthy than the most prominent position is that it is incumbent upon him to follow him, just as it is obligatory to give precedence to the more preferable of two evidences and the more reliable of two narrations.” Thus, based on this, it is incumbent upon him to imitate the more careful of two scholars and the more knowledgeable of two careful people, and if one of them is more knowledgeable and the other more careful, he imitates the more knowledgeable one according to the most correct position.

Regarding the permissibility of imitating the deceased, there are two opinions. The correct one is that it is permissible, because the *madhhabs* don’t die with the death of their codifiers, and this is why, after their time, they are still relied on in matters of consensus and difference of opinion, and because the death of a witness before the verdict has been given does not prevent the verdict from being based on his testimony, as opposed to his iniquity. The second is that it is not permissible because his qualification has lapsed like that of an iniquitous person, and this is weak, especially in these times.

The third: is it permissible for the layperson to choose and imitate whatever *madhhab* he wants? Al-Shaykh said, “There is discussion as to whether one is attributed to a *madhhab*, and we have based it on two opinions that have been related by al-Qāḍī Ḥusayn regarding the layperson: does he have a *madhhab* or not? One of them is that he does not have a *madhhab* because a *madhhab* is for the one who knows the evidences, and based on this he can ask whomever he wants, whether that person is Ḥanafī, Shāfi‘ī, or something else. The second, which is the most correct according to al-Qaffāl, is that he does have a *madhhab* and it is not permissible for him to contradict it,” and we have mentioned with regards to the attributed *muftī* what he is allowed to contradict his imam in. If

151. al-Qāḍī Ḥusayn ibn Muḥammad al-Marwazī, the author of *al-Ta‘līq* in Shāfi‘ī fiqh, was regarded as the shaykh of the Shāfi‘īs in Khorasan, and he studied *fiqh* with al-Qaffāl al-Marwazī. He died in Marwarūdh in the year 462 AH.

152. That is, of Imam al-Shāfi‘ī’s positions.

he is not attributed then there are two opinions that have been related by Ibn Burhān regarding the layperson: is it incumbent upon him to adopt a specific *madhhab* and follow its concessions as well as its strictness? One of them is that it is not incumbent upon him, just as it wouldn't have been incumbent upon him in the first age to imitate one specific scholar. Based on this, can he ask whomever he wants or is it obligatory upon him to look for the most stringent of the *madhhabs* and the soundest of them in terms of foundations in order to follow its people? There are two opinions that have been mentioned and they are like the two aforementioned opinions regarding looking into who is the more knowledgeable and more trustworthy of two *muftīs*. The second is that it is incumbent upon him, and this was decisively affirmed by Abū al-Ḥasan Ilkiyā,¹⁵³ and it applies to anyone who has not reached the level of *ijtihād* from amongst the jurists and the scholars of other sciences.

As for the opinion that it is permissible to follow any *madhhab* one wants, this would lead to one gathering the concessions of the *madhhabs* out of following one's own base desires, and choosing between that which has been declared lawful and that which has been declared unlawful, the obligatory and the merely permissible, and that in turn would lead to the noose of legal responsibility being loosened, as opposed to the first age, for indeed the *madhhabs* that comprised the rulings for events hadn't been refined, even though they were known.¹⁵⁴ Based on this, it is incumbent upon him to employ personal reasoning in choosing a *madhhab* to specifically follow, and we have paved an easy way for him to travel in his personal reasoning. Thus, we say that it is not for him to merely follow therein his desires and incline towards what he has found his parents and ancestors to be upon. It is not for him to adopt the *madhhab* of any of the imams of the Companions, Allah be pleased with them, or anyone else from that time, even though they were more knowledgeable and of a higher rank than those who came after, because they did not apply themselves to writing down knowledge and regulating its foundations and branches. Thus, none of them have a refined, edited, and affirmed *madhhab*. Those who did so are those who came after from amongst the imams who were ascribed to the *madhhabs* of the Companions and the

153. A colleague of Imam al-Ghazālī and student of Imam al-Ḥaramayn al-Juwaynī, Abū al-Ḥasan 'Alī al-Ṭabarī was from Ṭabaristan and travelled to Nishapur, Bayhaq (now known as Sabzevar in present-day Iran), and Iraq for the sake of knowledge, before eventually taking up a teaching post at the Niẓāmiyya in Baghdad, where he died in the year 504 AH.

154. For example, there was a Madinan school before it came to be known as the Mālikī school, there was a Baṣran school before it came to be known as the Ḥanbalī school, etc.

Followers and prepared the rulings for events before they happened and were diligent in clarifying their foundations and branches, such as Mālik, Abū Ḥanīfa, and others.

And when al-Shāfi‘ī came later in time than these imams and investigated their *madhhabs* in the same way that they investigated the *madhhabs* before them, he examined them, became thoroughly acquainted with them, criticized them, and chose the most preferable of them. He found that those who had come before him had spared him the trouble of moulding and founding, thus allowing him to devote himself to choosing, giving preference, perfecting, checking with his complete knowledge and proficiency in the sciences in addition to his being preferred over those who came before him. Then there was no one after him who reached his rank. His *madhhab* was the foremost of the *madhhabs* to be followed and imitated, and this, along with the fairness that it contains and its being free of reproach with regards to any of the imams, makes it clear and obvious that if the layperson reflects on the matter it will lead him to choose the *madhhab* of al-Shāfi‘ī and adopt it.

The fourth is that if two *muftīs* each give him a different *fatwā*, then the companions have five opinions. The first is that he takes the stricter of the two. The second is that he takes the more lenient one. The third is that he employs personal reasoning with regards to what is foremost and thus takes the *fatwā* of the one who is more knowledgeable and more careful, as has been clarified, and this is the chosen position of al-Sam‘ānī the Elder; and the text of al-Shāfi‘ī, may Allah be pleased with him, is similar with regards to the prayer direction. The fourth is that he asks another *muftī* and then takes the *fatwā* that agrees with his *fatwā*. The fifth is that he chooses, and thus takes the position of either of them that he wishes, and this is the most correct position according to al-Shaykh Abū Isḥāq al-Shīrāzī, the author, and al-Khaṭīb al-Baghdādī, and it has also been transmitted by al-Maḥāmīlī¹⁵⁵ at the beginning of *al-Majmū‘* from most of our companions. It is also the chosen position of the author of al-Shāmīl¹⁵⁶ if one regards both *muftīs* as equal.

Al-Shaykh Abū ‘Amr said, “The chosen position is that one must look into which is the more preferable and act upon it, for indeed it is the ruling of incompatibility (*al-ta‘āruf*), and thus one looks into who is the more

155. This is Abū al-Ḥasan al-Ḍabī al-Baghdādī, commonly referred to al-Maḥāmīlī in the biographical literature of the Shāfi‘īs. He studied *fiqh* with the aforementioned Shaykh Abū Ḥamid and reached such a level of proficiency that his teacher said of him, “Now he has memorized more *fiqh* than I have.” *Al-Majmū‘* is only one of his many books. He died in the year 415 AH at the age of forty-seven.

156. That is, Ibn Ṣabbāgh.

reliable of the two *muftīs* and acts upon his *fatwā*, and if he can't find any preference for one over the other, he asks another *muftī* and acts upon the *fatwā* that agrees with his *fatwā*. If that is not possible and the difference of opinion is regarding whether something is unlawful or permissible and he hasn't acted upon either, he goes with the opinion that it is unlawful, for indeed that is more cautious. If they are equal in every respect, then we let him choose between them, even though we reject letting him choose in other situations, because it is a necessity and in a rare circumstance."

Al-Shaykh also said, "Then we address the *muftīs* with what we have mentioned. As for the layperson who has this happen to him, his ruling is to ask those two *muftīs* or another *muftī*, and we have instructed the *muftī* as to how he should respond." This position that has been chosen by al-Shaykh is not strong. Rather, the most prominent position is any one of the three opinions, and they are the third, fourth, and fifth. The prominent¹⁵⁷ position is that the fifth is the most prominent of them, because he is not from those qualified to do *ijtihād*,¹⁵⁸ and thus he is only obligated to imitate a scholar who is qualified for that.¹⁵⁹ This is what he does by taking whichever of the two opinions he wishes, and the difference between him and what al-Shāfi'ī has stated (*naṣṣ*) regarding the prayer direction is that its signs are tangible,¹⁶⁰ and thus realizing the correct position is easier. Thus, there is disparity between the *mujtahids* therein when the signs of the *fatāwā* are intangible. However, there isn't great disparity between the *mujtahids*,¹⁶¹ and Allah knows best.

The fifth is what al-Khaṭīb al-Baghdādī said, "If there is only one *muftī* in the locality where he is then it is incumbent upon him to take his *fatwā*." Abū Muẓaffar al-Sam'ānī, Allah have mercy on him, said, "If the questioner hears the answer of the *muftī* he is not bound to act upon it unless he adheres to him."¹⁶² He also said, "It is permissible to say that he is bound by it if he has started acting upon it, and it has been said that he is bound by it if he feels that it is sound." Al-Sam'ānī said, "This is the foremost of the opinions." Al-Shaykh Abū 'Amr said, "I haven't found this for anyone else." After that, he related from one of the scholars of *uṣūl* that if the *muftī* gives him a *fatwā* regarding something that is differed over, then he can choose between accepting it or going to someone else.

157. That is, another opinion of Imam al-Shāfi'ī.

158. That is, personal reasoning.

159. That is, qualified to be imitated.

160. That is, the prayer direction can be indicated by the position of the sun, the stars and other physical factors.

161. That is, in issues like the prayer direction, in which there is only one correct answer.

162. That is, that *muftī* is the one he always goes to.

Then he gave his own chosen position, which is that the person must employ personal reasoning with regards to the individual *muftī*, and he is obligated to take the *fatwā* of the one he chooses based on his personal reasoning. Al-Shaykh said, “That which the principles require is that we set this forth in detail and thus say: If the *muftī* gives him a *fatwā* then we must investigate. If there is no other *muftī* then he must take his *fatwā*, and that does not depend on adhering to him, having started to act upon it or anything else. It also doesn’t depend on him feeling that it is sound. If he finds another *muftī*, if it is made clear that the one who gave him a *fatwā* is more knowledgeable and more trustworthy then he is bound by his *fatwā*, based on the most correct position concerning specifying a *muftī*, as has been mentioned. If it isn’t made clear then he isn’t bound by his *fatwā* just because he gave it to him, and thus it is permissible for him to ask someone else and imitate him, and the two of them agreeing in the *fatwā* is not known. If he does find that they agree or a ruler (*ḥākim*)¹⁶³ rules by it then he is bound by it.”

The sixth is that if he asks and is given a *fatwā* and then the same event happens again, is he obligated to ask the question again? There are two opinions. The first is that he is obligated due to the possibility of the *muftī* changing his mind. The second is that he is not obligated, and this is the most correct position, because he knows the first ruling and the foundation is that the *muftī* will stick to his position. However, the author of *al-Shāmil* specified the opposite position depending on whether he is imitating a living person or decisively when he is following a report from a deceased person, because he would not be obligated in that matter; but the correct position is that such a specification is not made because the *muftī* is already upon the *madhhab* of a deceased person and within his right to change his answer according to his *madhhab*.

The seventh is that he himself asks, and he can send someone trustworthy whose reports are reliable to ask on his behalf. He can also rely on the *muftī*’s handwriting if he is informed by someone he trusts that it is his handwriting, or his handwriting is known and thus there is no doubt in the world that the answer is in his handwriting.

The eighth is that the questioner should have etiquette with the *muftī*, and show him deference when addressing, answering him and so forth. He should not point in his face or say to him, “What have you memorized regarding such-and-such?,” or “What is the *madhhab* of your imam?,” or “al-Shāfi’i said regarding such-and-such”; and he should not say when he answers his

163. That is, a political ruler or a *marjaʿ*, who is a *faqīh* who holds authority in all matters, temporal and spiritual, and whom the layperson thus has to follow.

question, “That’s also my opinion,” or “such-and-such occurred to me.” He should also not say, “So-and-so gave me a *fatwā*,” or “Someone else gave a *fatwā* stating such-and-such”; nor should he say, “If your answer agrees with the one who wrote then write; if not, then don’t write.” He should not ask him while he is standing, in a state of alertness, if he is perturbed or anxious, or any other state that preoccupies the heart. He should begin with the oldest and most knowledgeable of the *muftīs* and present the questions in order of importance if he wants to gather the answers on one piece of paper. If he wants to have each answer on a separate piece of paper then he begins with whomever he wants. The piece of paper should be big enough for the *muftī* to answer clearly without having to make it brief, and thus detrimental to the questioner.

He should not omit a supplication for the one whom he is asking. Al-Ṣaymarī said, “If he asking for a *fatwā* from just one person he should say, ‘What is your position, and Allah have mercy on you,’ or ‘...Allah be pleased with you,’ or ‘...Allah grant you enabling success, show you the right way and be pleased with your parents.’ It is not good to say, ‘Allah have mercy on us and you.’ If he is asking for a *fatwā* from a group he should say, ‘What do you say, Allah be pleased with you,’¹⁶⁴ or ‘What do the jurists say, Allah the Exalted show them the right way,’ He should present the piece of paper to the *muftī* spread out and he should take it spread out. He should not hold it up to his face nor give it rolled up.”

The ninth is that the one writing on the piece of paper should be someone who is good at formulating questions and giving them purpose, as well as possessing clear handwriting and wording and the ability to protect both of them¹⁶⁵ from being subject to misreading. Al-Ṣaymarī said, “One should be keen to see that the writer is from the people of knowledge.” One of the leading jurists would not give a *fatwā* unless it was on a piece of paper that was written by a man who he himself was from the people of knowledge in his locality. The layperson should not demand that the *muftī* provide evidence. He should not say, ‘Why have you said this?’ If he wants to put himself at ease by hearing the proof then he should ask for it in another gathering, or in the same gathering but after accepting the *fatwā* as it is.” Al-Sam‘ānī said, “One is not prohibited from asking for evidence, and it is incumbent upon the *muftī* to mention the evidence if the matter is decisive and settled.”¹⁶⁶ It is not incumbent upon him if the matter is not decisive and settled, because this would require him to

164. That is, in Arabic, the questioner should use second-person, plural pronouns.

165. That is, one’s handwriting and wording, as one should protect them from any ambiguity or obscurity.

166. For example, if someone were to ask why intoxicants are prohibited the *muftī* could quote *Q al-Mā’ida* 5:90.

discuss his *ijtihād* and this would be difficult for the layperson to understand.

The tenth is that if the person who experienced the event does not find a *muftī* or anyone else to convey the ruling of his event to him, not in his locality nor anywhere else, al-Shaykh has said, “This is the issue of an interval of time between Revealed Laws,¹⁶⁷ and its ruling is the ruling of whatever existed before the appearance of the Revealed Law.” The correct position regarding all of this is that legal responsibility is lifted from the slave and no ruling is established regarding him: no obligation, no prohibition and no other legal ruling. Thus, the owner of the piece of paper is not taken to task for anything that he did therein, and Allah knows best.

167. That is, the situation is similar to one in which there is no Revealed Law.

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