

The Center for Muslim Contribution to Civilization

THE
*Distinguished
Jurist's Primer*

VOLUME II

*Bidāyat al-Mujtahid
wa Nihāyat al-Muqtaṣid*

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CONTENTS OF VOLUME II

(IN BRIEF)

DETAILED CONTENTS	ix
FOREWORD	xxvii
ABOUT THIS SERIES	xxix
CENTER FOR MUSLIM CONTRIBUTION TO CIVILIZATION: BOARD OF TRUSTEES	xxxii
CENTER FOR MUSLIM CONTRIBUTION TO CIVILIZATION: BOARD AND ADVISORS	xxxiii
INTRODUCTION	xxxiii
PREFACE	xlix
XVIII. THE BOOK OF <i>NIKĀḤ</i> (MARRIAGE)	1
XIX. THE BOOK OF <i>TALĀQ</i> (DIVORCE)	71
XX. THE BOOK OF <i>AL-ILĀʾ</i> (VOW OF CONTINENCE)	121
XXI. THE BOOK OF <i>ZIHĀR</i> (INJURIOUS ASSIMILATION)	127
XXII. THE BOOK OF <i>LĀʾN</i> (IMPRECATION)	140
XXIII. THE BOOK OF <i>IḤDĀD</i> (MOURNING)	150
XXIV. THE BOOK OF <i>BUYŪʿ</i> (SALES)	153
XXV. THE BOOK OF <i>ŠARF</i> (EXCHANGE)	232
XXVI. THE BOOK OF <i>SALAM</i> (ADVANCE PAYMENT)	240
XXVII. THE BOOK OF <i>KHIYĀR</i> (SALE WITH AN OPTION)	250
XXVIII. THE BOOK OF <i>MURĀBAḤA</i> (SALE AT STATED COST PRICE)	256

XXIX.	THE BOOK OF THE <i>‘ARIYYA</i> (ADVANCE SALE)	260
XXX.	THE BOOK OF <i>IJĀRA</i> (HIRE)	264
XXXI.	THE BOOK OF <i>JU‘L</i> (WAGES)	282
XXXII.	THE BOOK OF <i>QIRĀḌ</i> (SPECULATIVE PARTNERSHIP)	284
XXXIII.	THE BOOK OF <i>MUSĀQĀH</i> (CROP SHARING)	293
XXXIV.	THE BOOK OF <i>SHARIKA</i> (PARTNERSHIP)	301
XXXV.	THE BOOK OF <i>SHUF‘A</i> (PRE-EMPTION)	307
XXXVI.	THE BOOK OF <i>QISMA</i> (DIVISION; PARTITION);	317
XXVII.	THE BOOK OF <i>RAHN</i> (SECURITY FOR A DEBT; PLEDGE; MORTGAGE)	325
XXVIII.	THE BOOK OF <i>HAJR</i> (INTERDICTION)	334
XXXIX.	THE BOOK OF <i>TAFLĪṢ</i> (INSOLVENCY; BANKRUPTCY)	341
XL.	THE BOOK OF <i>ṢULḤ</i> (SETTLEMENT; NEGOTIATION)	353
XLI.	THE BOOK OF <i>KAFĀLA</i> (SURETY)	355
XLII.	THE BOOK OF <i>ḤAWĀLA</i> (TRANSFER OF DEBT; ENDORSEMENT)	360
XLIII.	THE BOOK OF <i>WAKĀLA</i> (AGENCY)	363
XLIV.	THE BOOK OF <i>LUQṬA</i> (FOUND PROPERTY)	368
XLV.	THE BOOK OF <i>WADĪ‘A</i> (DEPOSIT; BAILMENT)	375
XLVI.	THE BOOK OF <i>‘ĀRIYA</i> (COMMODITY LOAN)	379
XLVII.	THE BOOK OF <i>GHAṢB</i> (USURPATION)	383

XLVIII.	THE BOOK OF <i>ISTIḤQĀQ</i> (RESTITUTION; THIRD-PARTY RIGHTS)	394
XLIX.	THE BOOK OF <i>HIBĀT</i> (GIFTS)	397
L.	THE BOOK OF <i>WAṢĀYĀ</i> (BEQUESTS)	405
LI.	THE BOOK OF <i>FARĀ'ID</i> (INHERITANCE)	411
LII.	THE BOOK OF <i>'ITQ</i> (MANUMISSION; EMANCIPATION)	443
LIII.	THE BOOK OF <i>KITĀBA</i> (MANUMISSION BY CONTRACT)	453
LIV.	THE BOOK OF <i>TADBĪR</i> (MANUMISSION AT THE DEATH OF OWNER)	469
LV.	THE BOOK OF <i>UMMAHĀT AL-AWLĀD</i> (SLAVE-WOMEN BEARING THEIR MASTER'S CHILD)	475
LVI.	THE BOOK OF <i>JINĀYĀT</i> (OFFENCES)	478
LVII.	THE BOOK OF <i>AQDIYA</i> (JUDGMENTS)	553
	GLOSSARY	573
	INDEX	597

XVIII

THE BOOK OF *NIKĀḤ* (MARRIAGE)

The principles of this book are covered in five chapters:

Chapter 1: Preliminaries of marriage;

Chapter 2: Requirements for the validity of marriage;

Chapter 3: Requirements for an option (*khiyār*) in marriage;

Chapter 4: Marital rights; and

Chapter 5: Marriages prohibited by law.

18.1. Chapter 1: Preliminaries of Marriage

In this chapter there are four issues: the *ḥukm* of marriage; the *ḥukm* of the proposal (*khiṭba*) for marriage; proposal to a woman proposed to already; and glancing at the woman to be proposed to (*makhṭūba*).

18.1.1. Issue 1: The *ḥukm* of marriage

A group of jurists maintained that the *ḥukm* of marriage conveys recommendation. These are the majority (*jumhūr*). The Zāhirites said that it is obligatory. The later Mālikites held that for some it is obligatory, for others recommended, and for the rest it is permitted. This depends on the extent to which an individual fears falling into evil.

The reason for their disagreement lies in whether the form (*ṣigha*) of the command—in the verse: “[M]arry of the women who seem good to you”,¹ and in the tradition, “Marry, for through you I wish to outnumber the nations”, and in other traditions like it—implies obligation, recommendation, or permissibility. Those who say it is obligatory for some, recommended for others, and permitted for the rest, have recourse to *maṣlaḥa* (secured interest), which is a kind of analogy called *mursal*.² It is a principle for which there is no determined source of reliance; it has been rejected by a number of jurists. The preferred opinion in Mālik’s school is based on it.

¹ Qurʾān 4 : 3

² The word *mursal*, from *irṣāl*, means “to let go”. This term is used with reference to *qiyās*, which is analogy within a narrow framework tied down to a particular text. *Maṣlaḥa* is undertaken with reference to the meaning of the texts considered collectively, free from the hold of a particular text.