

Al-Qawānīn al-Fiqhiyyah

The Judgments of Fiqh

Al-Qarwānīn al-Fiqhiyyah

*fī talkhīṣ madhhab al-mālikiyyah
wa-t-tanbīh ‘alā madhhab ash-shāfi‘iyyah wa-l-
ḥanafīyyah wa-l-ḥanbalīyyah*

The Judgments of Fiqh

in Summation of the Mālikī Madhhab,
drawing attention to the Shāf‘ī,
Ḥanafī and Ḥanbalī madhhabs

Vol. 1 – ‘Aqīdah and ‘Ibādāt

Muḥammad ibn Aḥmad ibn Muḥammad

Ibn Juzayy al-Kalbī

Translated by Asadullah Yate



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DEDICATION

to Shaykh Dr. Abdalqadir as-Sufi

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IBN JUZAYY AL-KALBĪ

Abu-l-Qāsim Muḥammad ibn Aḥmad ibn Juzayy al-Kalbī from Granada in Andalusia was born in 693 AH into a distinguished and noble family and died *shahīd* at the great battle of Tareef in 741 AH. He was a *qāḍī*, grammarian, *faqīh*, commentator on the Qurʾān and poet. Among his teachers were Ibn az-Zubayr, Ibn Rashīd, Qāḍī Ibn Bartāl, the *khaṭīb* at-Tanjali and Abu-l-Qāsim ibn Shāt. Among his works are *Wasīlah al-muslim fī tahdhīb Ṣaḥīḥ Muslim*, *al-Aqwāl as-sunniyyah fī kalimāt as-sunniyyah*, *Taqrīb al-wuṣūl ilā ʿilm al-uṣūl*, *an-Nūr al-mubīn fī qawāʿid ʿaqāʿid ad-dīn*, *Taṣfiyyah al-qulūb fī wuṣūl ilā ḥadrah ʿallām al-ghuyūb*, *al-Mukhtaṣar al-bāri fī qirāʿah Nāfiʿ* and his *Tafsīr kitāb at-tas-hīl li ʿulūm at-tanzīl*.

His son, Abū Abdullah Muḥammad ibn Juzayy al-Kalbī (d. 758 AH), the scribe of the *Riḥlah* of Ibn Battuta, is sometimes confused with him.

TRANSLATOR'S PREFACE

The work presented here, *al-Qawānīn al-fiqhiyyah* ‘The Judgments of Fiqh’ is a concise summary of the *fiqh* of the ahl al-Madīnah – accompanied by the corresponding *aḥkām* of the other great schools of Islamic jurisprudence, some of which no longer flourish within the ummah. However it would be wrong to consider it as an apology for the fashion of *fiqh ‘ala al-madhāhib al-arbi‘ah – fiqh* according to the four madhhabs – or a democratization of legal procedure. Rather the opposite. This work is a demonstration of the superiority of the madhhab of the people of Madīnah. Just as Ibn Rushd in his *Bidāyah* did not come to the conclusion that all the madhhabs were the same, so Ibn Juzayy exclaims that those who have consciously chosen this as the school to follow are correct – as he says he is composing this work from a position of knowledge, knowledge that ‘the people of our land of Andalusia and the rest of the Greater Maghrib have chosen Imam Mālik, following as an example the Abode of the Hijrah, and being fortunate in their choice because of their having been granted success by Allah, exalted is He, and confirming the words of the truthful and sincere one ﷺ that the people of the Greater Maghrib shall continue to have knowledge of the truth until the coming of the Final Hour.’ In other words they are the truly successful by Allah.

It is important to note Ibn Juzayy’s inclusion – in the opening pages

of the *Qawānīn* – of Imam Mālik among the *salaf aṣ-ṣāliḥ*, i.e. the right-acting men and women of the earliest generations, from amongst the Companions, Tabi‘īn and the *imāms* of the Muslims. Of course he was, but the term *salaf aṣ-ṣāliḥ* has been so co-opted by a certain modern, imbalanced grouping, strong on narrow ‘piety and religion’ but devoid of any broad understanding of Islam as *dīn*, in which life, trade, society and authority are uppermost, that one forgets that the great Imam of Madīnah was one of the *salaf*.

With some reluctance we have prepared this edition with the standard orientalist transliteration of Arabic names and terms. Words such as *ṣalāt*, *zakāt*, *mūmin*, *wudū’*, etc. have become part of the vocabulary of Muslims and to write them with strange additional academic markings is to persist in the nineteenth century custom of regarding Islam as strange and foreign. It is not strange, in fact it is the only real *dīn* flourishing in Europe and the Americas, the others having been diluted to the point of becoming reductive, homoeopathic additions to real life. Nevertheless as the educated reader today is probably conversant with this convention and accustomed to it, it has become standard in Muslim publishing to transliterate words thus.

Such books of *fiqh* are especially important nowadays, I mean works which contain *all* the rulings regarding the transactions of life as opposed to those which are specifically to do with *‘ibādah*. It is disturbing to note how knowledge of such transactions – I refer to trade, legitimate currency, contracts etc. – has so diminished that where before one could travel to find the people of knowledge, now one usually has to look for it in books. As one ‘leading’ Azhari Shaykh resident in Germany advised me, when I asked him about a *mas’alah* case from the *mu‘āmalāt*, ‘Concentrate on *‘aqīdah*, brother, we don’t need to deal with such matters nowadays’. But the *mu‘āmalāt* are part

of our *‘aqīdah* just as the reality of the Messenger ﷺ is part of *‘aqīdah*, and it is this focus on *‘aqīdah* devoid of the actions of life that has reduced Islam to something merely mental or at best a spiritual affair of the heart. It has become boring for the youthful generation who see clearly that it has nothing to do with action or ‘real’ life and has become a thing akin to Christianity or to folklore. How can we say we follow Imam Mālik رحمته الله – the Imām of Dār al-Hijrah, the place where the *dīn* was established, the Imām of the *‘amal* of the people of Madīnah, the Imām who considered the life pattern of the people of Madīnah to be on a par with the *ḥadīth* of the Rasūl ﷺ as evidence of his *sunnah*, the Imām who recorded the madhhab of ‘Umar – when the only visible thing which distinguishes us from the other three madhhabs is the *sād* of the *ṣalāt*, i.e. the holding of one’s arms at one’s side during the *ṣalāt* rather than clutching them to one’s breast or belly, and even this is rapidly being abandoned.

Even if one is lucky enough to find someone of knowledge who understands something of trade, contracts and the gold/silver currency of our *dīn*, it is usually a knowledge derived from research in books or the internet – and if the action, practice or thing no longer exists on the ground, then that knowledge is no longer of the quality of knowledge acquired from a face to face meeting with someone who has existential knowledge of it but rather of the rank of mere ‘information’. However things have so far deteriorated that if we do not preserve this information, there can be no chance of reviving these actions.

AUTHOR'S INTRODUCTION

The slave of Allah and servant of the Book and the Sunnah, Muḥammad ibn Aḥmad ibn Muḥammad ibn Juzayy al-Kalbī, may Allah turn towards him, *amīn*, says:

In the name of Allah, All-Merciful, Most Merciful

May the peace and blessings of Allah be on our Master Muḥammad and his Family and Companions

Praise belongs to Allah, the Possessor of Majesty Whose essence the intellects of the gnostics are incapable of comprehending, and of perfection the adequate praise of Whom the tongues of those who praise are incapable of expressing, and of power the dread of which causes the hearts of the fearful to tremble, and of exaltedness before Whose might the faces of the obedient and the assiduous in worship are humbled, and of knowledge which encompasses that which is above the Footstool as far as the layers of the earth, and of wisdom whose effect is manifest in everything which comes into being, is created and multiplies – what is both visible and invisible to us, and of widespread mercy whose protection has embraced all of mankind, and of abundant blessings, and of penetrating proof and of irrefutable authority for those who deny the truth and invent lies. Glory be to a Sovereign Who has not created His slaves for amusement and Who did not leave them to go on unchecked! Rather, He sent His Messengers

with good news and a warning, calling people to the truth and to guidance, and calling them to forbid what is wrong and to command what is right and to be on their guard, and giving good news and a promise to those who accept the guidance and threatening those who overstep the bounds with punishment. Then He sealed the Message with our Prophet, Muḥammad ﷺ the bearer of the complete and final call to the truth and the message to all mankind and the jinn, the way of life abrogating all previous *dīns*; the bearer of a *sharī‘ah* to remain in force until the end of time and of clear Qur’anic *āyats*, conclusive proofs and manifest evidence. He sent the Qur’ān down to him as a guidance to mankind and clear instructions to afford guidance and discrimination and rendered it a demonstrative miracle for those capable of seeing, renewing itself with the alternation of the days and nights and the succession of ages. Allah did not take him back to Himself until He had perfected the *dīn* and completed it by him, and He had elucidated the clear way, and he had established him as the Proof of Allah over all of creation and there had appeared in existence the confirmation of His words, exalted is He: ‘*We have only sent you as a mercy to all the worlds*’ (Sūrat al-Anbiyā’ 21:107). May Allah’s blessings and peace be upon him, may His *barakah* and mercy be upon him, may He raise and honour him – as well as his pure family and his most honourable Companions.

This book, about the basic laws and judgments of the *sharī‘ah* and detailed aspects of *fiqh*, is based on the madhhab of the Imam of Madīnah Abū ‘Abdallāh Mālīk ibn Anas al-Aṣḥabī ﷺ given that the people of our land of Andalusia and the rest of the Greater Maghrib have chosen him, following as an example the Abode of the Hijrah, and being fortunate in their choice because of their having been granted success by Allah, exalted is He, and confirming the words of

the truthful and sincere one ﷺ 'the people of the West shall continue to have knowledge of the truth until the coming of the Final Hour'.

Then in addition to this we draw attention to many instances of agreement or difference between the aforesaid Imam and Imam Abū 'Abdallāh Aḥmad ibn Idrīs ash-Shāfi'ī, Imam Abū Ḥanīfah an-Nu'mān ibn Thābit and Imam Abū 'Abdallāh ibn Ḥanbal in order thereby to complete the benefit and render it of greater use – for those four are the models of emulation for the Muslims throughout the lands of the earth and those who are followed, well known and generally accepted. On occasion, however, I have indicated a madhhab other than theirs from amongst the Imams of the Muslims, like Sufyān ath-Thawrī, al-Ḥasan al-Baṣrī, 'Abdullāh ibn al-Mubāarak, Ishāq ibn Rahwayh, Abū Thawr, an-Nakha'ī, Dāwūd ibn 'Alī the Imam of the Zāhirīs whose madhhab I have transmitted on numerous occasions, al-Layth ibn Sa'd, Sa'īd ibn al-Musayyab and al-Awzā'ī as well as others, may Allah be pleased with all of them, for each of them is of the rank of a *mujtahid* regarding the *dīn* of Allah and their madhhabs are ways leading to Allah.

Know that this book is superior to other books by virtue of three qualities:

1. It combines a clear arrangement of the madhhab with mention of the differences with the other madhhabs – contrary to other books which deal with the madhhab in particular, or with the differences with other madhhabs in particular;

2. We have laid it out with clarity by dividing it up and arranging it elegantly and we have facilitated its understanding by pruning it of any superfluties or defects and clarifying the way it is expressed – so how many divisions within sections and how many detailed expositions of primary judgments have facilitated an understanding

of what was difficult and made the exceptional, anomalous judgments more accessible!

3. In it we have aimed to combine concision and explanation, despite the fact that they are rarely to be found in combination, and thus by the help of Allah it turned out to contain an ease of expression, to be subtle in its indications, complete in its meanings, but with so few words that those wishing to learn it by heart become devoted to it.

And it is Allah that we request to make this work the cause of His forgiveness of the author and a means of obtaining His good pleasure, and that it lead to the opening up of the treasures of His kindness and gracious gifts, for surely He is the Possessor of vast overflowing generosity.

AN EXPLANATION OF THE TERMINOLOGY OF THE BOOK

If we mention a judgment or ruling, in the first instance we record the madhhab of Mālik, then we follow this by the madhhabs of others, either by an explicit text or by indication and allusion, and if we refrain from speaking of the differences of judgment with respect to a matter then this generally indicates that there is no difference of judgment in this matter.

If we mention consensus and the agreed upon judgment then we refer to the consensus of the Muslim ummah. If we mention the ‘majority’ then we refer to the agreement of the ‘*ulamā*’ except those whose judgments are irregular.

If we mention ‘the four’ then we refer to Mālik, ash-Shāfi‘ī, Abū Ḥanīfah and Ibn Ḥanbal – whereby notice is given that some ‘*ulamā*’ differ with them, and on occasion we give an explanation in this regard. If we state that ‘some people (*qawm*) have said’ or ‘contrary to some people’ then we refer to what has been said outside of the four madhhabs.

If we mention 'the three' then we refer to Mālik, ash-Shāfi'ī and Abū Ḥanīfah – whereby in this, notice is given that Aḥmad ibn Ḥanbal differs from them or that he has not transmitted a teaching in this matter.

If we mention 'the two Imams' then we refer to Mālik and ash-Shāfi'ī. If we mention the pronoun 'the two of them, or both of them', as in our saying 'according to the two' or 'contrary to the two' then we refer to ash-Shāfi'ī and Abū Ḥanīfah. If we mention the plural pronoun, such that we say 'according to them' or 'contrary to them' or the like, then we refer to ash-Shāfi'ī, Abū Ḥanīfah and Ibn Ḥanbal.

If we mention 'the madhhab' then we refer to the madhhab of Mālik whereby notice is given that others differ. If we mention the well known position (*mashhūr*), – i.e. the well-known and generally accepted judgment, then we refer to the judgment which is generally accepted in the madhhab of Mālik – whereby notice is given of a difference of judgment within the madhhab.

If we state that such-and-such has been said or there is a difference of judgment about such-and-such a matter, or there are two different judgments about such-and-such a matter then usually we refer to the madhhab of Mālik. If we say that there are two transmissions then we refer to Mālik, and we usually state the well-known judgment first of all.

AN EXPLANATION OF THE ARRANGEMENT OF THE BOOK

Know that I begin the book with a concise '*aqīdah*' in accordance with the Sunnah, mentioning the most important aspects first – for there is no doubt that the roots are more important than the branches, and it is only right to place what is subordinate afterwards and place the principal first.

Then I have divided the *fiqh* into two parts, the first regarding the

acts of worship and the second the actions and transactions of daily life, and I have inserted ten ‘books’ with a hundred chapters in each section, thus the *fīqh* is contained in twenty books and two hundred chapters in all.

The first section contains the following books: the book of purification, the book of *ṣalāt*, the book of funerals, the book of *zakāt*, the book of fasting and *i’tikāf*, the book of hajj, the book of *jihād*, the book of oaths and vows, the book of food and drink, hunting and sacrifice, the book of beasts slaughtered for the *‘Īd* festivals, beasts slaughtered following the birth of a child and circumcision.

The second section contains the following books: the book of marriage, the book of divorce and what is related to it, the book of sales, the book of contracts made with respect to sales, the book of judgments and testimony, the book containing chapters related to judgments, the book of compensatory payments for homicide or injury and *ḥadd* punishments, the book of gifts and similar matters, the book of setting slaves free and matters connected with it, and the book of the obligatory divisions of inheritance and testaments. Then we have sealed it with the book of miscellaneous matters containing twenty chapters. The ‘books’ and chapters are only contained in this number as I have inserted each matter with others like it and joined every subordinate matter with its principle, while on occasion I have gathered together in one explanation what others have explained in many different instances, out of my concern for uniting closely related and similar matters and out of my desire for brevity. Allah is the One Who helps and there is no power and no strength but by Allah the High, the Vast.

THE OPENING DISCOURSE CONCERNING WHAT IS NECESSARILY TRUE IN MATTERS OF ‘AQĪDAH

BEING FROM AMONGST THE ROOTS OF THE VARIOUS BRANCHES OF THE
DĪN OF ISLAM. IT COMPRISES TEN CHAPTERS, FIVE PERTAINING TO
DIVINE KNOWLEDGES AND FIVE TO TRANSMITTED

1. THE EXISTENCE OF THE CREATOR, HIS MAJESTY IS MAJESTIC AND HIS FAVOUR IS CHERISHED

Know that both the higher and lower worlds have been brought into being in time after their non-existence and both testify that they themselves are in-time creations and that their Creator is eternal from before endless time – this being apparent from the changes to the attributes of things and the succession of movements and moments of rest in physical bodies which manifest in these worlds, as well as other contingent matters which occur. Moreover for every in-time occurrence there must be that which has brought it into being and a creator which created it – given that for every action there must be an actor. Thus all existent realities in the earth and the heavens – all living creatures and non-sentient physical bodies of the mountains, oceans, rivers, trees, fruits, flowers, winds, clouds, rain, the sun and moon, the stars and the very alternation of the night and the day, indeed everything contained

in it, whether large or small – are the effects of a creative act and are subtle manifestations of wisdom and arrangement. Thus in every thing there is conclusive evidence and obvious proof for the existence of the Creator, and this is Allah, the Lord of the Worlds and the Creator of all creatures, the King, the Clear Truth Who has been veiled from the sight of man by His Greatness and the sublimity of His affair but has manifested to inner sight by the might of His Authority and the clarity of His proof. How great is the proof for Allah and how many the evidences of Allah! *‘Is there any doubt about Allah? The Bringer into Being of the heavens and the earth’* (Sūrah Ibrāhīm 14:10). And the *fiṭrah*, the natural pattern of human existence on which He created mankind, and what is necessarily found in the self of the neediness of slavehood and recognition of Lordship is enough for you: *‘If you asked them, “Who created the heavens and the earth?” they would certainly say, “Allah!”’* (Sūrah Luqmān 31:25).

2. THE ATTRIBUTES OF Allah, EXALTED IS HE AND MIGHTY IS HIS AFFAIR AND HIS AUTHORITY IS OVERWHELMING!

It is customary for those who study *kalām*, the rational study of *‘aqīdah*, to affirm seven attributes, namely: life, power, will, knowledge, hearing, seeing and speech.

‘LIFE’

Allah is the Eternal First from before endless time before the existence of created times and eras. There was nothing other-than-Him with Him, and He is now as He was. He is the Living, the Everlasting, the Last Who does not die, whereas *‘Everyone on it will pass away’* (Sūrah ar-Raḥmān 55:26).

‘POWER’

He has power over all things, nothing frustrates His power and ability, nothing is difficult for Him and: *‘He has the Dominion of all things in His Hand’* (Sūrah Yāsīn 36:83). Do you not see the result of His Power in the origination of the existent realities and how He keeps a firm hold on the earth and heavens, and in the execution of His command regarding the way the created realities behave – such that every day He causes some to die some to live, He creates and he causes to pass away, He impoverishes some and enriches others, He guides and He leads astray, He gives sovereignty to whomever He wills and He takes sovereignty from whomever He wills, He gives and He withholds, He brings low and He raises, He makes some happy and others miserable and He spares some and tests others? *‘His command when He desires a thing is just to say to it, “Be!” and it is’* (Sūrah Yāsīn 36:82).

‘WILL’

He, glory be to Him, is the One Who wills all beings, the One who directs the occurrences in creation, Who determines the time, degree, nature and extent of all decrees, Who does what He wishes – so anything of benefit or harm, anything sweet or bitter, unbelief and belief, obedience and disobedience, increase and decrease, and profit and loss is by His will from before endless time, by His judgment and power and by His desire based on wisdom. There is no averting His command and no deferring His judgment, there is no remonstrating with Him regarding His action – *‘He will not be questioned about what He does, but they will be questioned’* (Sūrah al-Anbiyā’ 21:23). Every blessing from Him is an overflow of His generosity, and every affliction from Him is justice; His dominion and His wisdom require that – for

the owner does what he wants in his property and the king decides as he wishes for his subjects. Moreover the man of wisdom knows better what his wisdom requires – *‘and Allah knows but you do not know’* (Sūrah al-Baqarah 2:216). He has determined the creatures’ amount of provision, their life-spans, their actions and whether they are to be unhappy or happy, unfortunate or fortunate – *‘everything is in a clear Book’* (Sūrah Hud 11:6). He has created some people for the Garden and has made the way to ease easy for them, such that it is the actions of the people of the Garden which they perform; and He has created some people for the Fire and made their way to difficulty easy such that it is the actions of the people of the Fire which they perform – *‘Your Lord does not wrong His slaves’* (Sūrah Fuṣṣilat 41:46).

‘KNOWLEDGE’

He, blessed and exalted is His name, knows all that is to be known, encompasses what is in the depths of the earth right up to what is beyond the heavens, encompasses everything in His knowledge, has accounted for everything by number, knows what was and what will be and what will not be – such that if it were to be, He knows how it would be. He is present by His knowledge in every place and He is the One watching over every person – *‘He knows what you keep secret and what you make public and He knows what you earn’* (Sūrah al-An‘ām 6:3). He is equally aware of the manifest and the hidden and He has knowledge of the most concealed secrets and what is in the most hidden recesses of the minds and hearts of mankind, so much so that He knows even what occurs to the awareness of the fish in the depths of the oceans – *‘Allah knows what the heart contains’* (Sūrah al-Anfāl 8:43).