

Al-Qawānīn al-Fiqhiyyah

The Judgments of Fiqh Vol. 2

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. 2 – Mu‘āmalāt and other matters

Muḥammad ibn Aḥmad ibn Muḥammad

Ibn Juzayy al-Kalbī

Translated by Asadullah Yate



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Al-Qawanin al-Fiqhiyyah Vol. 2 – Mu‘āmalāt and other matters

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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 al-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 Qur’ān and composer of poetry. Among his teachers were Ibn az-Zubayr, Ibn Rashīd, the 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 al-sunniyyah*, *Taqrīb al-wuṣūl ilā ‘ilm al-uṣūl*, *an-Nūr al-mubīn fī qawā‘id ‘aqā‘id ad-dīn*, *Taṣfiyyah al-qulūb fī wuṣūl ilā ḥaḍrah ‘allām al-ghuyūb*, *al-Mukhtaṣar al-bārī‘ fī qirā‘ah Nāfi‘* and his *Tafsīr kitāb at-tas-hīl li ‘ulūm at-tanzīl*.

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

Part 2

THE LAWS OF *FIQH* REGARDING
MU'ĀMULĀT – I.E. THE ACTIONS,
TRANSACTIONS AND MATTERS OF
EVERYDAY LIFE

THIS COMPRISING TEN CHAPTERS

1. MARRIAGE AND LEGAL SEXUAL INTERCOURSE COMPRISING TEN CHAPTERS

1. INTRODUCTORY MATTERS

THIS COMPRISES FIVE MATTERS

1. THE RULING OF MARRIAGE

A woman's vagina only becomes legally licit by means of marriage or when the woman is an owned slave. Marriage – and legal sexual intercourse – is in general recommended, while the *Zāhirīs* have deemed it obligatory. As for a detailed description, it may be divided into five sections: obligatory, this being for someone who is able to financially and who fears lest he commit fornication if he does not; recommended, in the case of someone who is able but does not fear that he will fornicate; *ḥarām* in the case of someone who is not able and does not fear for himself regarding fornication; *makrūh* in the case of someone who does not fear fornication but fears lest he not fulfil its rights; and licit, in cases other than the aforementioned. As for with owned slaves, this is licit.

2. PROPOSAL OR ASKING FOR SOMEONE IN MARRIAGE (*KHIṬBAH*)

This is recommended, and it is permitted to look at the girl or woman one asks for in marriage before having intercourse with her, in agreement with them, but one may only look at her face and hands,

while Abū Ḥanīfah has permitted one to look at her feet, and one group permitted looking at the whole of her body, while yet another have not permitted one to look at any of her body.

It is recommended to make a speech (*khutbah*) during the formal proposal of marriage (*khitbah*).

An open proposal to a woman who is still in her *ʿiddah*, i.e. the waiting period following divorce or being widowed, is *ḥarām*, although it is permitted to give an indication, that is to say something the meaning of which is understood but without expressing one's intent explicitly, and a gift may be understood as being part of this indication.

And it is not permitted to propose marriage after another has done so and this has been accepted, or trust has been established or the two parties have come near to each other. Ibn al-Qāsim has said that this applies in the case of two who are compatible, but that it is not *ḥarām* for a rightly-acting person to make a proposal on top of the proposal of a corrupt person. Whoever does make a proposal after another has already done so is to be chastised, but if the contract has been concluded then it is not invalidated, in agreement with the two, while it is also said that it is invalidated, in accordance with the *Zāhirīs*, and it is also said that it is invalidated before consummation but not after it.

3. THE WEDDING FEAST

It is something one is charged to do and it takes place after consummation of the marriage. It is obligatory to accept when invited to it, although it is also said that it is recommended – and this applies in the case when there is nothing reprehensible there or the possibility of being molested by the crowded circumstances and the like, and he may choose what he wishes regarding the food, and the fasting person may attend and may also be invited.

It is recommended to have singing during it – singing of the kind which is permitted – and the beating of drums, of the type that are open at one end like the sieve. As for the *mizhar* drum – and this refers to the large drum rounded at both ends – there are various rulings – that it is permitted, prohibited and *makrūh*. And Ibn Kinānah has permitted horns, and pipes and flutes as long as they do not divert people in an unseemly manner. And it is *makrūh* to scatter sugar and almonds or anything else in order that those attending seize them as this would be a [kind of] plundering, which is prohibited, while Abū Ḥanīfah has permitted it.

COMPLEMENTARY MATTER – INVITATIONS TO FEASTS

THIS COMPRISING FIVE SECTIONS

1. That which it is obligatory to accept – wedding feasts.
2. That which it is recommended to accept, in the case of what someone organises for special persons from among his brothers out of love for them.
3. That which it is permissible to accept, like for example an invitation to an *‘aqīqah* or circumcision feast.
4. That which it is *makrūh* to accept, that is in the case of feasts organized for show and vaunting.
5. That which it is *ḥarām* to accept, this being one which a man organises for someone for whom it is *ḥarām* for him to give anything as a gift, like a creditor, or which a *qāḍī* organises for one of two disputants in a case before him.

4. THE WITNESSING OF THE WEDDING

It is not obligatory for the contract but is necessary for consummation, this being a condition for perfection with respect to the contract and a condition for permissibility in the case of consummation, whereas

ash-Shāfi‘ī has said that it is obligatory for both, while one group has said that it is not obligatory in either case.

It is stipulated that the two witnesses be just and upright, contrary to Abū Ḥanīfah and the bearing witness of a man and two women is not permitted, contrary to Abū Ḥanīfah.

And marriage in secret is not permitted and if it does occur then it is annulled. And it is recommended to announce it, while Ibn Ḥanbal has deemed this obligatory. And if two witnesses witness it but are instructed not to disclosed then this is deemed a secret marriage, contrary to the two.

5. RECORDING THE MARRIAGE PORTION IN WRITING

However, it is not a stipulated condition, but rather it may be written, and like all other documents serves as confirmation in the case of claims and serves to eliminate disputes, and the Zāhirīs have deemed it obligatory to write down all contracts involving a debt or delayed payment.

COMPLEMENTARY MATTERS

Seven conditions are stipulated regarding the writer of the documents: that he be just and upright, capable of speech, hearing and sight, knowledgeable of the *fiqh*, i.e. the legal nature, of documents, knowledgeable of their textual formulations, free of any grammatical mistakes which would alter the meaning of what was said.

2. THE BASIC ELEMENTS OF MARRIAGE

They are five in number: the bridegroom, the bride, the legal guardian, the marriage portion and the formulation of the offer and acceptance. We shall mention the legal guardian and the marriage portion below.

AS FOR THE FORMULATION

It refers to what is required to express offer and acceptance, like for example the words ‘a giving in marriage’ or ‘transfer of possession’ and both are on par with sale or gifting of something, contrary to ash-Shāfi‘ī. Any lightheartedness or joking is deemed as seriousness according to the agreed judgment.

Marriage is a binding contract from which it is not permitted to have the option of withdrawing, contrary to Abū Thawr. And it is necessary that the acceptance follows immediately after the offer, although if there is a slight delay between the offer and the acceptance this is permitted; ash-Shāfi‘ī however has said that it is not permitted under any circumstances, while Abū Ḥanīfah has permitted a delay in all circumstances.

AS FOR THE BRIDE AND BRIDEGROOM

SEVEN QUALITIES ARE TAKEN INTO ACCOUNT

1. ISLAM

Four forms of marriage may be envisaged: a Muslim male with a Muslim female, a *kāfir* male with a *kāfir* female – these two forms being permitted; and the marriage of a *kāfir* male with a Muslim female – and this is *ḥarām* in all circumstances, according to the consensus; and the marriage of a Muslim male with a female *kāfir* – in which case both marriage and intercourse through possession is permitted if she is one of the People of the Book, but it is not permitted to marry or have intercourse with any other *kāfir* female; and Mālik has deemed a *ḥarbiyyah* – i.e. a woman from Dār al-Ḥarb – *makrūh* on account of the child remaining in Dār al-Ḥarb; and Ibn ‘Umar and Ibn ‘Abbās have prohibited marriage and intercourse with any female *kāfir*.

FOUR SECONDARY MATTERS

1. If one of the two parties reneges on their Islam, then the bond of marriage ceases – because invalidated, whereas it has also been said because it is equal to a final¹ divorce, while it has also been said because it is equal to a revocable divorce.

2. If the two parties become Muslim together then their marriage is confirmed if free from any impediments, and one does not seek out the guardian or consider the matter of a marriage portion; if the bridegroom became Muslim beforehand then the marriage is confirmed with respect to a woman from the People of the Book, and it is confirmed with respect to any other female if she becomes Muslim immediately after him; but if she becomes Muslim beforehand and it is before consummation then a separation takes place, and if after it and he becomes Muslim during the *‘iddah* waiting period, then it is confirmed – otherwise final separation is effected.

3. If he becomes Muslim and he has more than four wives, then he chooses four and separates from the others.

4. If he becomes Muslim and he has married two sisters, then he chooses one of them.

2. BEING A SLAVE

This may be envisaged as taking four forms: the marriage of a free man with a free woman, or the marriage of a male slave to a female slave – these two forms being permitted; and the marriage of a male slave to a free woman in which case it is permitted as long

1 When a divorce is final (*bā‘inah*), for example when the *‘iddah* waiting period expires, there is no possibility of reconciliation, but the man may propose a new marriage contract. When a divorce is irrevocable, they may not marry again, except if the woman contracts a valid marriage, not a pro-forma marriage, which is consummated and this second marriage ends in divorce, in which case the former husband is at liberty to propose marriage in a new contract.

as this is acceptable to her, and if he misleads her then she has the option; and the marriage of a free man to a female slave, this being permitted on three conditions: first, that she be Muslim; second, that he lacks funds, that is the marriage portion for a free woman, while it is also said to refer to the expenses of upkeep; third that he fears lest he commit fornication; and the absence of a ‘gift’ or fear lest one commit fornication are not stipulated conditions in the case of the marriage of a male slave to a female slave.

FOUR SUBSIDIARY MATTERS

1. It is not permitted that either of the two parties be owned by the other, according to the agreed judgment, and it is not permitted that he marry the female slave owned by his son, nor the *umm walad* of his master, i.e. a female slave who has given birth by her master, – in which case an marriage of this nature would be annulled in all circumstances.

2. If one of the two parties buys the other or buys a part share then the marriage is annulled by the purchase of the buyer of the person purchased, or part of this person.

3. A male slave is not to marry without the permission of his master and if he permits him, then it is permitted, contrary to ash-Shāfi‘ī.

4. If a free man marries a free woman while being married to a female slave, or a female slave while married to a free woman, then the free woman has the option of remaining or leaving by means of one final divorce as it is her right that he not unite her with a female slave, but she has no option in a male slave combining her with a female slave according to the well-known position (*mashhūr*).

3. BEING OF AGE

If someone who is underage but capable of intercourse marries

without the permission of his father or guardian then the latter may permit this or annul it both before and after consummation, and there is no marriage portion for her, while Ṣaḥnūn has said that it is not permitted even if the father or guardian give permission.

4. MATURITY

If a foolish or legally incompetent person marries without the permission of his guardian, then the latter may allow it to go ahead if the person in question is able to do what is right, otherwise he may refuse it, and if he refuses to allow it before consummation then there is no marriage portion, while afterwards a quarter of a dinar is payable, although Ibn al-Mājjishūn has said that she does not get anything.

5. SIMILARITY OF STATUS OR COMPATIBILITY BETWEEN TWO PARTIES IN MARRIAGE

Five attributes are taken into account:

Islam;

Freedom – in accordance with what has been mentioned above;

Good character – for a woman is not to marry a corrupt person, and it is up to her and the person who undertakes to act for her to annul it, irrespective of whether the guardian is her father or someone else;

Wealth he possesses, although it is not stipulated that it be a large amount, and she is accorded the last word in the case of a bridegroom unable to fulfil her rights;

Absence of bodily defects – which if present in one party necessarily result in the other being accorded the option of withdrawing from the contract;

Old age, ugliness or any quality which arouses disparagement is *makrūh*, but beauty is not stipulated, and genealogy and status are not

taken into account, contrary to the two, and ash-Shāfi‘ī has added not having a base or vile occupation.

6. HEALTH

Marriage is not permitted to a sick man or woman for whose life one fears, according to the well-known position (*mashhūr*), contrary to the two, and it is annulled if it occurs – unless the person regains his or her health before the annulment, and there is a difference of opinion regarding this annulment and annulment with three pronouncements; if consummation has not taken place, then she is not entitled to a marriage portion, and if consummation has taken place then she is entitled to the marriage portion stipulated, while it has also been said she is entitled to the marriage portion appropriate to someone like her.

7. THE ABSENCE OF THE STATE OF *IHRĀM*

It is not permitted to marry a *muḥrim* or to marry off a *muḥrim*, and if it occurs it is annulled even if consummation has taken place or the woman has given birth; and the annulment is effected without pronouncement of divorce, although it has also been said by means of divorce – and there are two narrations as to whether she remains permanently prohibited for him, while Abū Ḥanīfah has permitted a *muḥrim* to marry and marriage to a *muḥrim*.

SUMMARY

There are four conditions regarding the bridegroom for the validity of the marriage: Islam, in the case of marriage to a Muslim woman; sanity; discrimination; confirmation of maleness – excluding thereby ambiguity of gender in the case of hermaphrodites, for the latter are not to marry or be given in marriage, while he may have concubines.

And there are five conditions for the consolidation of the marriage: freedom, being of age, *rushd*, i.e. proper and sensible conduct, health and compatibility.

SECONDARY MATTER

If one of the two parties or the guardian is compelled to the marriage, then it is not binding, and the person thus compelled is not to permit it as it has not been contracted.

3. THE GUARDIAN

THIS CONSISTS OF FOUR MATTERS

1. THE RULING

It is an obligatory condition, contrary to Abū Ḥanīfah, for a woman is not to contract marriage on her own behalf or for someone else, irrespective of whether she is a virgin or *thayyib*, i.e. had already married, or whether she is noble or of common stock, whether she is of proper and sensible conduct or foolish and legally incompetent, whether free or a slave, whether her guardian has given permission to her or not; and if marriage does take place then it is annulled both before and after consummation, even if it is of long standing and she has given birth to children – and there is no *ḥadd* punishment for any sexual intercourse because of the judicial error [upon which the marriage is based], but the agreed marriage portion is maintained.

2. THE TYPES OF PERSON WHO MAY BE GUARDIANS

Guardianship is of two kinds: particular and general.

The particular is of five types: the father, his *waṣī*, i.e. commissioned agent, close relations, the *mawlā* (a slave woman's owner), and the Sultan.

The general is that of Islam.

As for the father, his guardianship is of two types: compulsion and permission, compulsion being in the case of a virgin, even if of age, and in the case of the girl who has not reached puberty, even if she is no longer a virgin having already married; and it is recommended to consult her.

Compulsion occurs for one of the two above mentioned reasons, and Abū Ḥanīfah has said that there is no compulsion in the case of an adult woman, and ash-Shāfi‘ī that one does not coerce the woman who has already married. If a virgin advances in age then there is a difference of opinion as to whether coercion still exists or ceases – and such a woman, an ‘old maid’ is one who remains a virgin for a long time, who exposes her face and who knows what is best for her age, being thirty, while it is also said thirty five, and also said forty.

Permission applies to the woman who has already married (*thayyib*) and who is of age, and what is taken into account in the case of her being *thayyib* – which would prevent her from being coerced into marriage – is *ḥalāl* sexual intercourse [within the marriage] not *ḥarām*, according to the well-known position (*mashhūr*), while it is also said in the case of all woman who are *thayyib*, in agreement with ash-Shāfi‘ī.

As for the commissioned agent of the father and the commissioned agent delegated by the commissioned agent they stand in for and fulfil the contract in place of the father, contrary to ash-Shāfi‘ī, and this person may coerce and give away in marriage before and after puberty without consulting the bride if the father has accorded him this mandate, and he has precedence over near relations; and some of the later *fuqahā’* deem that it is recommended for the guardian to give preference to the commissioned agent such that both aspects are respected; but if the commissioned agent concludes the contract

then this is permitted even if the guardian does not give permission, and if the guardian fulfils the contract without permission of the commissioned agent then this is permitted in the case of the *thayyib*.

As for the commissioned agent appointed by the *qādī* he may conclude the contract after puberty but not before it, but he may not use coercion and he is obliged to consult her; and if the commissioned agent is a woman, then she appoints someone on her behalf to conclude the contract.

As for ‘close relations’, this refers to paternal relations, like the son, brother, grandfather, paternal uncle, brother’s son, and son of paternal uncle – and they are only to marry off a female of age with her permission, and the *thayyib* gives permission by expressing this vocally while a virgin expresses it by her silence. And if the contract precedes permission then there is a difference of opinion as to the validity or invalidity of the marriage. None of them may coerce her, although ash-Shāfi‘ī has said that the grandfather may coerce her.

As for the *mawlā*, that is one who frees the slave, he concludes for the woman he has freed if she has no paternal relations. A woman who sets a slave free appoints someone to conclude the contract for what female slave she has freed if the latter has no male paternal relatives. The lower guardian has no guardianship. And the master may coerce his male and female slaves into marriage. But the master is not to be coerced into marrying off his slave, and the master is not to carry out a divorce against his slave.

As for the Sultan, he may marry off the female of age in the absence of a guardian, or if he is wrongfully preventing her from marrying, or if he is absent, but neither he nor anyone else may marry off a girl who is below the age of puberty, although it has also said that this is permitted him.

It is permitted for close relations to marry her off if necessity demands this, or she is in need, and if intercourse takes place with girls similar [in age] to her. And ash-Shāfi‘ī has said the grandfather may marry her off and Abū Ḥanīfah has said all the other guardians may marry her off, and she has the option [of refusal] if she is of age.

As for the guardianship of the generality of the Muslims, this is permitted within the madhhab if the particular guardianship is not possible; if it is possible then it is said that it is not permitted as well, in agreement with them, while it is also said that it is permitted in the case of a female of low or inferior rank there being no danger in her case – given that all possible bridegrooms would be compatible, contrary to a female of another rank.

SUMMARY

There are five persons whose marriage is binding if contracted for them by someone else, irrespective of whether they are displeased or content with this: an underage male child and a virgin girl married off by their father; a male or female slave married off by their master; and a young orphan whose appointed agent (*wasī*) marries him off.

And if a male slave gets married without the permission of his master then the master may permit it or annul it as he wishes – with one expression of divorce or two.

But if a female slave marries without permission of her master then this is not permitted, and even if her master permits it, she may not contract marriage on her own behalf.

3. THE ORDER OF IMPORTANCE OF THE GUARDIANS

As for the guardian who may coerce, this is the father and his commissioned agent.

Those who may not be close relations, the one who owns a slave (*mawlā*), and the Sultan.

As for the rank of precedence of the near relations, it is the son, then his son and so on, then the father, then the brother, then his son, then the grandfather, then the paternal uncle, then his son, while it is also said that the father has precedence over the son; and ash-Shāfi‘ī has said that the son has no right of guardianship, and it has also been said that the grandfather takes precedence over the brother, in agreement with ash-Shāfi‘ī.

SIX SECONDARY MATTERS

1. If a more distant relation marries off someone when a closer relation exists, then the contract is carried out, and it is also said that the Sultan is to examine the matter, while it is also said that it is up to the near relation to annul it if it has not been consummated – and this is in the case where there is no coercion for there is no difference of opinion within the madhhab as to the annulment when someone other than the father has married off the virgin daughter when the father is present, except if the brother concluded the contract for the marriage of his virgin sister without the permission of her father – for if he is responsible for the instructions of his father then this is permitted, if the father has given him permission, while Abū Ḥanīfah has said that it is not permitted even if his father has given him permission.

2. If the near relation is absent then guardianship is transferred to the more distant relation, and ash-Shāfi‘ī has said to the Sultan.

3. If two guardians marry off a female to two different men, then the bridegroom who has consummated the marriage takes precedence if one does not know which of the two was the first to contract the marriage.

4. If the guardian wrongfully prevents a woman from marrying then the Sultan instructs him to marry her off, and if he still refuses then the Sultan marries her off – as long as she is invited to an appropriate match and a marriage portion appropriate for someone of her status.

5. It is permitted for the son of the paternal uncle, the owner of a slavewoman (*mawlā*), the guardian's delegate, and the governor to marry off a woman of their own accord, and they are to assume responsibility for both parties to the contract, contrary to ash-Shāfi'ī, and each is to bring witnesses to her acceptance for fear lest she dispute [the contract].

6. If the father of a virgin is absent, and she is such that she may be coerced, then the other guardians and the Sultan may marry her off if she has no guardian.

4. THE ATTRIBUTES OF THE GUARDIAN

Namely Islam, being of age, of sane mind, male – according to the agreed judgment of the four, free, contrary to Abū Ḥanīfah.

There is a difference of opinion as to the stipulation that the person be of just and upright character, and it is also said that the foolish or legally incompetent person may make the contract for the female in his guardianship, contrary to Abū Ḥanīfah, while it is also said that the person legally responsible for the incompetent person is to conclude the contract; and the *kāfir* may conclude the contract for a *kāfir*, and the Muslim may only conclude the contract in the case of a female *kāfir* if she is enslaved.

SECONDARY MATTER

It is permitted for the guardian to delegate someone to contract the marriage after specifying the bridegroom, and the bridegroom may also delegate someone to contract it for him, contrary to Abū

Thawr. And these attributes are not stipulated in the case of the delegated person, but on the contrary it is valid to delegate a *kāfir*, a commissioned agent (*wasī*), a slave and a woman, according to the well-known position (*mashhūr*).

4. THE MARRIAGE PORTION (ṢADĀQ)¹

This is a stipulation, according to the consensus, and it is not permitted for the parties to mutually accept that it be annulled, or to make it a condition that it be annulled. And this consists of six matters.

1. ITS CONDITIONS

THEY ARE THREE IN NUMBER

1. That it be something which may be owned and sold – be it gold or silver, physical articles of property, real estate and slaves; wine, pig or anything else which may not be owned are not permitted.

2. That it be known: anything unknown is not permitted except in the case of a *tafwīd* marriage, i.e. one in which the marriage portion is not named. And it is not necessary to make a description of the articles of property, contrary to ash-Shāfi‘ī, but if they are not described, she is to be given the average.

3. That the marriage portion be free of uncertainty – so a runaway slave or camel and the like are not permitted.

FOUR SECONDARY MATTERS

1. Marriage on the basis of a wage, like a service to be rendered and the teaching of Qur’ān, is not permitted, according to the well-known position (*mashhūr*), in agreement with Abū Ḥanīfah, while it is also said that it is permitted according to ash-Shāfi‘ī and Ibn Ḥanbal.

1 *ṣadāq* or *mahr* is wealth given to the bride by the bridegroom, contrary to a European ‘dowry’ which was given to the bridegroom by the parents of the bride.

2. It is not permitted him to free his female slave and make the freeing of her a marriage portion, contrary to Ibn Ḥanbal and Dāwūd.

3. It is permitted for the marriage portion to be either cash or a deferred payment to be paid at a specific date within the normal lifespan of the marriage partners, and it has also been said that the latest date is forty years. And it is recommended to combine cash and deferred payment, and to give a quarter of a dinar before consummation, although one group has prohibited deferred payment, and al-Awzā'ī has permitted it up until death or separation.

4. There are two narrations about if he gives her a marriage portion which is not permitted: first, that it is annulled before consummation but confirmed after it, in accordance with Abū 'Ubayd; second, that it is annulled before consummation but confirmed after it, and the marriage portion is one appropriate to her rank and situation; while Abū Ḥanīfah has said, may Allah be pleased with him, that it is confirmed before and after consummation and one begins again with a marriage portion adequate to her rank. And if he gives her a marriage portion which has been expropriated illegally then it is annulled before consummation and confirmed afterwards with a marriage portion adequate to her rank, while it has also been said that it is affirmed in all cases.

2. THE AMOUNT

There is no maximum limit to the marriage portion while the minimum is a quarter of a gold dinar or three silver dirhams or the legal weight or what is equivalent to one of them. And Abū Ḥanīfah has said that the minimum is ten dirhams, and ash-Shāfi'ī and Iṣḥāq and others that there is no minimum limit, indeed that it is permitted with an iron ring as has been narrated in the *ḥadīth*.

3. ITS PAYMENT IN FULL OR HALF OF IT

Payment of all of it is obligatory on consummation or on death, according to the agreed judgment, and a half on divorce before consummation, according to the agreed judgment, unless he divorces her in a *tafwīd* marriage. And there is a difference of opinion as to whether all of it is obligatory for her at the contract then a half is waived on divorce before consummation, or a half of it is obligatory for her at the contract and the remaining half on consummation or death, and this difference is one of terminology.

A CLARIFICATION

Consummation which results in the necessity to pay the full marriage portion refers to sexual intercourse, not merely being alone with her and removing her veil, contrary to Abū Ḥanīfah: and if she takes up her abode with him and they differ as to the intercourse, then she has the last word; and if he is alone with her without her taking up residence, then the last word is also hers, while Ibn al-Qāsim has said that if he is alone with her in his house then the last word is hers and if in her house then she is not believed in this.

And if she resides with him and this goes on for a year then the whole of the marriage portion must be given her. And if she claims intercourse has taken place but they have not been alone together, then he must make an oath and he is exempt from half of the marriage portion; if he abstains from this, she swears an oath and must be given the whole of it. And there is a difference of opinion with regard to our saying 'she has the last word' as to whether she is believed on her giving an oath, or on her expressing this with words of lesser account than an oath.