

On the literature of shurūṭ; selection of editions and translations:

- I. GOLDZIEHER, *Muhammedanische Studien* ii, Halle 1890, 233, 253 (transl. L. BERCHER, *Études sur la tradition islamique*, Paris 1952, 292, 316).

Hanaṣī authors:

- SHAYBĀNĪ (d. 189/804): his *Kitāb al-Shurūṭ* exists in extracts, incorporated in the comments of Sarakhsī (d. 483/1090), in the *Mabsūṭ* of this last (vol. xxx, Cairo 1331, 167-209).
- KHAṢṢĀF (d. 261/874), who also wrote on *hiyal*, *adab al-kāḍī*, *wakf*, and *nafaḳāt*, composed three works on *shurūṭ* (*Kitāb al-Fihrist*, 206).
- AḤMAD IBN ZAYD (another author of the 3rd/10th century), called *Shurūṭī* because of his special interest in the subject, likewise wrote three works on *shurūṭ* (*Kitāb al-Fihrist*, 208).
- ṬAḤĀWĪ (d. 321/933), too, one of the great authorities of his school, is the author of three works on *shurūṭ*, of which the most concise and parts of the most detailed have survived (two parts ed. J. SCHACHT in *Sitzungsber. Heidelberger Akad. Wiss., Phil.-hist. Klasse*, 1926/27, no. 4, and 1929/30, no. 5).
- al-Fatāwā al-'Ālamgīriyya* (11th/17th century; cf. above, p. 94): this work contains, in two extensive chapters, numerous extracts on *shurūṭ* from the authoritative works of the school (vol. vi, *Būlāḳ* 1310, 160-248; *Kitāb al-maḥāḍir wal-sijillāt*; 248-389; *Kitāb al-shurūṭ*).
- S. ROUSSEAU, *A Dictionary of Mohammedan Law* [technical terms 'used in the East Indies'] . . . to which is added an appendix containing forms of . . . instruments and contracts of law, London 1802.

Mālikī authors:

- IBN MUḠHĪTH (d. 459/1067), *al-Muḳnī*, transl. S. VILA, *Abenmoguit, 'Formulario Notarial', Capítulo del matrimonio*, Madrid 1931 (separately printed from *Anuario de historia del derecho español*).
- A. GONZÁLEZ PALENCIA, *Los Mozárabes de Toledo en los siglos XII y XIII*, i-iii and volumen preliminar, Madrid 1926-30 (Mozarabic documents drawn up in the technical forms of *wathā'iq*; cf. J. SCHACHT, *Der Islam*, xix (1931), 172-7; W. HOENERBACH, 'Some Notes on the Legal Language of Christian and Islamic Deeds', *J.A.O.S.* lxxxi (1961), 34-38).
- 'Documentos árabes del Cenete (siglos XII-XV)', *Al-Andalus*, v (1940), 301-82 (cf. *ibid.* vi (1941), 477-80).
- L. SECO DE LUCENA PAREDES, 'Documentos árabes granadinos', *ibid.* viii (1943), 415-29; ix (1944), 121-40.
- 'Actas notariales arábigo-granadinas', *Miscelánea de estudios árabes y hebraicos*, ii (1953), 99-107.
- *Documentos arábigo-granadinos*, Madrid 1961 (documents of the 9th/15th century).
- J. BOSCH VILÁ, 'Los documentos árabes del archivo catedral de Huesca', *R.I.E.E.I.* v (1957), 1-48 (documents of the 6th/12th and the 7th/13th centuries).
- IBN SALMŪN (d. 767/1365), *al-'Iḳd al-Munazzam lil-Ḥukkām*: J. LÓPEZ ORTIZ,

Algunos capítulos del formulario notarial de Abensalmún de Granada, Madrid 1928 (separately printed from *Anuario de historia del derecho español*).

IBN FARHŪN (d. 799/1397), *Tabṣīrat al-Hukkām*; cf. WANSHARISĪ, *Kitāb al-Wilāyāt*, ed. and transl. Bruno and Gaudefroy-Demombynes (above, (p. 231), Appendixes I and II.

IBN 'ARḌŪN (d. 992/1584), *Kitāb al-Lā'iq li-Mu'allim al-Wathā'iq*; cf. G. S. COLIN, *J.A.* cccxii (1933), 207.

MUḤAMMAD BANNĀNĪ FIR'AWN (d. 1281-82/1865; cf. *E.I.*², s.v. *Bannānī*), *Kitāb al-Wathā'iq*, transl. under the direction of F. GUAY, 'Formulaire des actes juridiques', *R.A.* 1932, 205-22; 1933, 272-338.

MUḤAMMAD TUWĀTĪ, *Majmū' al-Ifūda fī 'Ilm al-Shahāda*, transl. J. ABRIBAT, *Recueil de notions de droit musulman et d'actes notariés*, 1896.

European works on Mālikī wathā'iq:

L.-J. BRESNIER, *Extrait de la chrétomathie arabe vulgaire*, troisième partie: Actes judiciaires, Algiers 1846.

E. LAUNE, *Formulaire arabe d'actes de procédure*, Oñan 1890.

P. VASSEL, 'Über marokkanische Prozesspraxis', *M.S.O.S.* v/2 (1902), 1-63.

E. VIALA and MOHAMMED GENNADY, *Guide du traducteur*, Casablanca 1924.

E. ZEYS and MOHAMMED OULD SIDI SAÏD, *Recueil d'actes et de jugements arabes*, avec la traduction française, 2nd ed. by H. Pérès, Algiers 1946.

A. GUIRAUD, *Jurisprudence et procédure musulmanes*, Casablanca 1925, Tunis 1948.

J. LAPANNE JOINVILLE, 'L'action en pétition d'hérédité', *R.M.D.* ii (1950), 65-69 (on 'pratique judiciaire et notariale').

Shāfi'ī and other authors:

SHĀFI'Ī (d. 204/820) wrote a *Kitāb al-Shurūf* (*Kitāb al-Fihrist*, 210), and two original documents of his have been incorporated in his *Kitāb al-Umm*; cf. F. KERN, 'Zwei Urkunden vom Imām as Šāfi'ī', *M.S.O.S.* vii/2 (1904), 53-68.

ABŪ THAWR (d. 240/854), MUZANĪ (d. 264/878), DĀWŪD IBN KHALAF (d. 270/887), and ṬABARĪ (d. 310/923) likewise wrote works on *shurūf* (*Kitāb al-Fihrist*, 212, 217, 234; HĀJJĪ KHALĪFA *Lexicon*, iv, 46 f.).

NUWAYRĪ (d. 732/1332), *Nihāyat al-Arab fī Funūn al-Adab*: this work contains a section on *shurūf* (vol. ix, Cairo 1333, 1-160) which is based on the *Mukhtaṣar al-Mukūtabāt al-Badī'a* of the Shāfi'ī author Muḥammad ibn 'Abd Allāh al-Ṣayrafī (d. 330/942).

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- 6 J. SCHACHT, in *Der Islam*, xx (1932), 209-14, and in *S.I.* xii (1960), 101-4.
J. H. KRAMERS, 'Droit de l'Islam et droit islamique', *A.H.D.O.* i (1937), 401-14.

CHAPTER 12

- 1 G. MARÇAIS, *La Berbérie musulmane et l'Orient au Moyen Âge*, Paris 1946, 238-45.
J. BOSCH VILA, *Los Almorávides*, Tetuan 1956.
- 2 See the bibliography on Northern Nigeria, above, p. 240.
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- 3 C. A. NALLINO, *L'Arabia Sa'ūdiana*, vol. i of *Raccolta di scritti*, Rome 1939, 75-80, 96-108, 123.
J. P. M. MENSING, *De bepaalde straffen in het hanbalietische recht*, Leiden 1936.
J. SCHACHT, in *A.J.C.L.* viii (1959), 136 f.
On the project of codification of Ibn Saud: *O.M.* viii (1928), 36-38;
J. SCHACHT, loc. cit., 146 f.
On the Ordinance on Commerce: A. D'EMILIA, 'Intorno al codice di commercio dell' Arabia Saudiana', *O.M.* xxxii (1952), 316-25.
P. T. HART, 'Application of Hanbalite and Decree Law to Foreigners in Saudi Arabia', *George Washington Law Review*, xxii (1953), 165-75.
On Yemen: G. W. BURY, *Arabia Infelix*, London 1915, index, s.v. *Islamic code*.
- 4 C. VAN H. ENGERT, *A Report on Afghanistan*, Washington 1924 (Department of State, Division of Publications, Series C, no. 53), 75 f., 97-99.
S. BECK, *Das Afghanische Strafgesetzbuch vom Jahre 1924 mit dem Zusatz vom Jahre 1925*, Berlin 1928 (separately printed from *W.I.* 1928, 67-157).
S. BECK and F. GROBBA, in *Rechtsvergleichendes Handwörterbuch*, ed. F. SCHLEGELBERGER, i, Berlin 1929, 289-310.
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ADDENDA TO CHAPTER 11

- for p. 240: J. N. D. ANDERSON, 'The Future of Islamic Law in British Commonwealth Territories in Africa', in *African Law*, Duke University School of Law, Durham, N.C. 1962, 617-31.
- for p. 241, §2: S. D. GOITEIN, 'Commercial and Family Partnerships in the Countries of Medieval Islam', *Islamic Studies*, iii (1964), 315-37.

CHAPTER 13

- 1 *H. A. R. GIBB and H. BOWEN, *Islamic Society and the West*, i/1, 2, London 1950-7 (particularly part 1, 19-25, part 2, 70-138, and indexes s.vv. *kađā*, *kāđt*, *kānūn*, *kānūn-nāme*, *muftī*, *muhtesib*, *şer'ā*, *şeyhū'l-Islām*, *şubāşī*, *'ulemā*).
- P. WITTEK, 'Devşirme and Şarī'a', *B.S.O.A.S.* xvii (1955), 271-8; cf. V. L. MÉNAGE, *ibid.* xviii (1956), 181-3.
- V. L. MÉNAGE, art. 'Devşirme', in *E.I.*²
- B. LEWIS, art. 'ARŪS RESMİ', in *E.I.*²
- 2 J. H. KRAMERS, art. 'Şaikh al-Islām', in *Shorter E.I.*; J. R. WALSH, art. 'Fatwā (ii)', in *E.I.*²
- J. SCHACHT, art. 'Abu'l-Su'ūd', in *E.I.*²
- *M. HARTMANN, in *Der Islam*, viii (1918), 313-17 (report on an important anonymous publication in *Milli Tettebüler Mecmuası*, i (1331/1915), 49-112, 305-48).
- On Abu'l-Su'ūd and Land law :*
- P. LEMERLE and P. WITTEK, 'Recherches sur l'histoire et le statut des monastères athonites sous la domination turque', *A.H.D.O.* iii (1948), 411-72 (pp. 427-30, 466-8); cf. J. SCHACHT, in *Classicisme et déclin culturel dans l'histoire de l'Islam*, Paris 1947, 151.
- On restrictions of the competence of the *kađīs* and the Ottoman statute of limitation, cf. É. TYAN, *Histoire de l'organisation judiciaire en pays d'Islam*, 2nd ed., Leiden 1960, 353-6; J. SCHACHT, in *S.I.* xii (1960), 102 f.
- P. HORSTER, *Zur Anwendung des islamischen Rechts im 16. Jahrhundert*, Stuttgart 1935 (edition and translation of a collection of *fatwās* of Abu'l-Su'ūd; unsatisfactory).
- G. D. GALABOV and H. W. DUDA, *Die Protokollbücher des Kadiamtes Sofia*, Munich 1960.
- F. SELLE, *Prozessrecht des 16. Jahrhunderts im osmanischen Reich*, Wiesbaden 1962 (edition and part translation of a collection of *fatwās* of Abu'l-Su'ūd and others).
- 3 J. SCHACHT, in *Der Islam*, xx (1932), 211 f.
- J. DENY, art. 'Timār', in *E.I.*¹
- J. SAUVAGET, *Introduction à l'histoire de l'Orient musulman*, 2nd ed. by Cl. CAHEN, Paris 1961, 198 (additional bibliography on *kānūn-nāmes*).
- *ÖMER LÜTFİ BARKAN, *Kanunlar*, Istanbul 1945 (with an important introduction).
- H. İNALCIK, 'Osmanlı hukukuna giriş: örfi-sultani hukuk ve Fatih'in kanunları', in *Siyasal Bilgiler Fakültesi Dergisi*, xiii/2 (Ankara 1958), 102-26.
- *U. HEYD, *Ottoman Documents on Palestine 1552-1615*, Oxford 1960, 59-61; artt. 'Djazā (ii)' and 'Djurm', in *E.I.*² (on penal law).
- On the *kānūns* (*kānūn-nāmes*) of the predecessors of the Ottomans, cf. B. LEWIS, in *B.S.O.A.S.* xvi (1954), 599; V. MINORSKY, *ibid.* xvii (1955), 449 f.

On the supervision of public morals and the muhtasib:

G. JACOB, in *Der Islam*, ix (1919), 252 f.; the same, 'Türkische Sittenpolizei im 16. Jahrhundert', *ibid.* xi (1921), 254-9.

4 *On later Ottoman developments:*

*I. MOURADGEA D'OHSSON, *Tableau général de l'Empire ottoman*, in 3 vols., Paris 1787-1820, in 7 vols., 1788-1824 (vols. 5 and 6 contain an account of the actual legal system, based on the *Multaqa 'l-Abhur* [below, p. 261]).

G. JÄSCHKE, 'Türkische Gesetzsammlungen', *W.I. n.s.* iii (1954), 225-34 (bibliography on all periods).

J. H. KRAMERS, art. 'Tanzimât', in *E.I.*¹

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E. SCHMIDT, 'Entwicklung und jetzige Verfassung der ordentlichen Gerichte . . . in der Türkei', *M.S.O.S.* i/2 (1898), 91-123.

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M. J. L. HARDY, *Blood Feuds, &c.* (above, p. 241).

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C. A. HOOPER, *The Civil Law of Palestine and Trans-Jordan*, i, Jerusalem 1933, reprinted London 1934; ii, Jerusalem 1936 (commentary).

Studies:

C. SNOUCK HURGRONJE (1911), *Verspreide Geschriften*, iv/2, 260-6 (on codification in general).

J. H. KRAMERS, art. 'Medjelle', in *E.I.*¹

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civile ottomano" e la compilazione privata di Muhammed Qadri Pascia', *A.H.D.O.* iii (1948), 473-84.

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5 L. OSTROROG, *The Angora Reform*, London 1927.

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CHAPTER 14

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- 2 SIR THOMAS W. ARNOLD, art. 'India', section 4, in *E.I.*¹
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 *SIR BENJAMIN LINDSAY, in *Modern India and the West*, ed. L. S. S. O'Malley, London 1941, 107-37 (lacking a bibliography).
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 G.-H. BOUSQUET, *Du droit musulman et de son application effective dans le monde*, Algiers 1949, 50-65.
 †W. H. MACNAGHTEN, *Reports of Cases determined in the Court of Nizamut Adawlut*, 2 vols., Calcutta 1827.
 †— *Principles and Precedents of Moohummudan Law*, Calcutta 1825; 3rd ed., with additional notes, &c., by W. Sloan, Madras 1864; *Principles of Muhammadan Law* (without the Precedents, with additional material), compiled by Prosunno Coomar Sen, Calcutta 1881.
 †N. B. E. BAILLIE, *The Moohummudan Law of Sale*, and *The Land Tax of India* (above, 1), introductions.
 †SIR ROLAND KNYVET WILSON, *An Introduction to the Study of Anglo-Muhammadan Law*, London 1894.
 I. MAHMUD, *Muslim Law of Succession and Administration*, Karachi 1958 (on the divergence of Anglo-Muhammadan from strict Islamic Law).
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- M. BORRMANS, 'Le Code tunisien de statut personnel et ses dernières modifications', *IBLA*, xxvii (1964), 63-71.

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CHAPTER 16

- 1 *Selected Authoritative Handbooks of Islamic Law* (for the earliest texts, see above, p. 228; for a general bibliography, see C. Brockelmann, *Geschichte der arabischen Literatur*², 2 vols., Leiden 1943-9; *Supplementbände*, 3 vols., Leiden 1937-42).

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SARAKHSĪ (d. 483/1090), *al-Mabsūṭ*.

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MAWLĀ KHUSRAW (d. 885/1480), *Ghurur al-Aḥkām*, and his own commentary *Durar al-Ḥukkām*.

IBRĀHĪM AL-ḤALABĪ (d. 956/1549), *Multaḳa 'l-Abḥur*; commentary *Majma' al-Anḥur* by SHAYKHZĀDE (d. 1087/1667); part transl. (chapters on sale, money-changing, suretyship) by H. SAUVAIRE, *Le Moultaqa el abheur, avec commentaire abrégé du Madjma el anheur*, Marseilles 1882 (Académie des Sciences, Belles-Lettres et Arts de Marseille) (the systematic part of the present book is based on this work).

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IBN 'ABDĪN (d. 1252/1836), *Radd al-Muḥtār 'ala 'l-Durr al-Mukhtār*.

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Mālikī works:

IBN ABĪ ZAYD AL-ḲAYRAWĀNĪ (d. 386/996), *al-Risāla*; transl. E. Fagnan, Paris 1914; L. BERCHER, Algiers 1945.

KHALĪL IBN IṢḤĀḲ (d. 767/1365), *al-Mukhtaṣar*, with numerous commentaries, e.g. by Ḥaṭṭāb (d. 954/1547), Khirshī (d. 1101/1689), and Dardīr (d. 1201/1786), with a gloss by Dasūḳī (d. 1230/1815); transl. I. GUIDI and D. SANTILLANA, *Sommario del Diritto Malechita*, 2 vols., Milan 1919 (a standard work); G.-H. BOUSQUET, *Abrégé de la loi musulmane selon le rite de l'imām Mālek*, 4 vols., Algiers 1956-62 (supersedes the previous French translations); E. FAGNAN, *Concordances arabes*, Algiers 1889.

IBN 'AṢĪM (d. 829/1427), *Tuḥfat al-Ḥukkām*; transl. L. BERCHER, Algiers 1958.

'ABD ALLĀH GANNŪN, *Muḥādhi 'l-Zakkāḳiyya*, ed. and transl. B. DE PARFENTIEF, *En suivant la Zaqqāqiyya*, Paris 1958 (a contemporary beginners' manual).

Fatwās of MUḤAMMAD 'ILLĪSH (d. 1299/1881), *Fath al-'Alī al-Mālik*.

Shāfi'i works:

SHĪRĀZĪ (d. 476/1083), *al-Tanbih*; transl. G.-H. BOUSQUET, 4 vols., Algiers 1949-52.

GHAZZĀLĪ (d. 505/1111), *al-Wajiz*.

ABŪ SHUJĀ' (d. 593/1196), *al-Takrīb*; transl. G.-H. BOUSQUET, *Abrégé de la loi musulmane selon le rite de l'imām El-Chāfi'i*, separately printed from R.A. 1935.

NAWAWĪ (d. 676/1277), *Minhāj al-Ṭālibin*; transl. L. W. C. VAN DEN BERG, *Le Guide des zélés croyants*, 3 vols., Batavia 1882-1884 (very unsatisfactory; corrections in Bousquet's translation of Shīrāzī).

— *al-Majmū'*, a commentary on another work of Shīrāzī, *al-Muḥadḍhab*; much more detailed but less authoritative than the *Minhāj*; completed by Taḳī al-Dīn al-Subkī (d. 756/1355), *Takmilat al-Majmū'*.

IBN KĀSĪM AL-GHAZZĪ (d. 918/1512), *Fath al-Ḳarīb*, a commentary on Abū Shujā', *al-Takrīb*; transl. L. W. C. VAN DEN BERG, *La Révélation de l'Omniprésent*, Leiden 1895 (unsatisfactory; corrections in Bousquet's translation of Shīrāzī).

IBN ḤAJAR (d. 975/1567), *Tuḥfat al-Muḥtāj*, and

RAMLĪ (d. 1006/1596), *Nihāyat al-Muḥtāj*; these two commentaries on Nawawī's *Minhāj* are the standard texts for the doctrine of the Shāfi'i school.

IBRĀHĪM AL-BĀJŪRĪ (d. 1276/1860), a *ḥāshiya* (supercommentary) on the *Fath al-Ḳarīb* of Ibn Kāsim al-Ghazzī; partly digested (omitting the chapters on religious duties, the holy war, &c.) by E. SACHAU, *Muḥamedanisches Recht nach schafītischer Lehre*, Stuttgart and Berlin 1897 (cf. C. SNOUCE HURGRONJE, in *Z.D.M.G.* liii (1899), 125-67; reprinted in *Verspreide Geschriften*, ii. 367-414).

ALĪ BIN HEMEDI EL BUHRĪY, *Mīrāthi*, a *Handbook of the Mahomedan Law of Inheritance*, transl. (Sir) Philip E. Mitchell, Nairobi (Government Printer) 1923, reprinted 1949; *Nikahi*, a *Handbook of the Law of Marriage in Islam*, transl. J. W. T. ALLEN, Dar es Salaam (Government Printer) 1959 (translations from the Swahili of contemporary beginners' manuals).

Collections of *fatwās* by Taḳī al-Dīn al-Subkī, Ibn Ḥajar, and Ramlī.

Hanbalī works:

KHIRAḲĪ (d. 334/945), *al-Mukhtaṣar*.

MUWAFFAḲ AL-DĪN IBN ḲUDĀMA (d. 620/1223), *al-Mughnī*, formally a commentary on the *Mukhtaṣar* of Khirāḳī; an encyclopaedic work.

— *al-'Umda*, a concise treatise; transl. H. LAOUST, *Le Précis de droit d'Ibn Qudāma*, Beyrouth 1950 (with a valuable introduction).

SHAMS AL-DĪN IBN ḲUDĀMA (d. 682/1284), *al-Sharḥ al-Kabīr*, a commentary on a more detailed handbook of MuwaffaḲ al-Dīn, *al-Muḳnī'*.

HIJĀWĪ (d. 968/1560), *al-Iḳnā'* (or *Zād al-Mustaḳnī'*).

MAR'Ī IBN YŪSUF (d. 1033/1624), *Dalīl al-Ṭālib*; commentary by IBRĀHĪM

IBN MUḤAMMAD IBN DŪYĀN (d. 1353/1934), *Manār al-Sabīl*, part transl. G. M. BAROODY, *Crime and Punishment under Hanbali Law*, privately printed 1962.

BAHŪTĪ (d. 1051/1641), *Sharḥ al-Muntahā*.

— *al-Rawḍ al-Murbi'*, a commentary on the *Iknā'* of Hijāwī; the four last works are prescribed textbooks in Saudi Arabia.

Zāhiri work:

IBN ḤAZM (d. 456/1065), *al-Muḥallā*.

Ibādī works:

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'ABD AL-'AZĪZ IBN IBRĀHĪM AL-MUṢ'ABĪ (d. 1223/1808), *al-Nīl*; part transl. E. ZEYS, *Droit mozabite. Le Nil. Du mariage et de sa dissolution*, Algiers 1891 (separately printed from R.A. 1887, 1888, 1890); HUREAUX, *Droit mozabite. De la tutelle*, Algiers 1882; extract translated by Mercier, below.

MUḤAMMAD IBN YŪSUF ATṬIYĀSH (d. 1332/1914), *Sharḥ al-Nīl*, a commentary on the preceding work; extract translated by Mercier, below.

M. MERCIER, *Étude sur le waqf abadhite et ses applications au Mزاب*, Algiers 1927.

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HUSAYN IBN AḤMAD AL-SIYĀGHĪ (d. 1221/1806), *al-Rawḍ al-Naḍīr*, a commentary on the *Majmū' al-Fiḥh* attributed to Zayd ibn 'Alī (above, p. 228).

'Twelver' Shiite work:

MUḤAQQIḲ AL-HILLĪ (d. 676/1277), *Sharā'i' al-Islām*; part transl. N. B. E. BAILLIE, *A Digest of Moohummudan Law*, ii, London 1869, reprinted Lahore 1958 (on the 'statut personnel' and connected subjects); transl. A. QUERRY, *Droit musulman. Recueil de lois concernant les Musulmans schyites*, 2 vols., Paris 1871-2.

Ismā'īlī Shiite work:

AL-ḲĀDĪ NU'MĀN (d. 363/974), *Da'ā'im al-Islām*; part transl. A.A.A. FYZEE, *The Ismaili Law of Wills*, London 1933.

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LÓPEZ ORTIZ, *Derecho musulmán*, 36-41 (on Mālikī works used in Spain).

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 Cf. also IBN KHALDŪN (d. 808/1406), *al-Muqaddīma*, *faṣl* 6, §§ 7 (on *fiḥh*), 8 (on *farā'id*), 9 (on *uṣūl*); transl. MAC GUCKIN DE SLANE, *Les Prolégomènes*, iii, reprinted Paris 1938, 1-38; transl. F. ROSENTHAL, *The Muqaddīmah*, iii, New York 1958, 3-30.
- 2 †G. BERGSTRÄSSER, *Zur Methode der Fiqh-Forschung*, *Islamica*, iv/3 (1930), 283/94.
- 3 W. HEFFENING, *Zum Aufbau der islamischen Rechtswerke*, in *Studien . . . Paul Kahle . . . übersicht*, Leiden 1935, 101-18 (but see J. SCHACHT, in *XII Convegno 'Volta'*, Rome 1957, 208).
- On reasonings explaining the traditional order of subjects, cf. SNOUCK HURGRONJE, *Verspreide Geschriften*, ii. 395, n. 1; Santillana, *Istituzioni*, i. vii-ix.

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- IBN AL-MUTAKKINA (d. 579/1183), *Bughyat al-Bāhith* (or *al-Raḥbiyya*), ed. and transl. WILLIAM JONES, *The Mahomedan Law of Succession*, London 1782 (Hanafi).
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- SHAYKH 'ABD AL-KĀDIR (wrote 1304/1886), *al-Nahr al-Fā'id fī Ilm al-Farā'id*, ed. and transl. L. HIRSCH, *Der überfließende Strom in der Wissenschaft des Erbrechts*, Leipzig 1891; text and transl., *Treatise on the Muhammedan Law, entitled 'The Overflowing River of the Science of Inheritance and Patrimony'*, &c., 2nd ed., Aden 1899 (Hanafi and Shāfi'i).

Works on waḳf (Hanafi):

- HILĀL AL-RA'Y (d. 245/859), *Aḥkām al-Waḳf*.
- KHAṢṢĀF (d. 261/874), *Aḥkām al-Waḳf*.
- IBRĀHĪM IBN MŪSĀ AL-ṬARĀBULUSĪ (d. 922/1516), *al-Is'āf fī Aḥkām al-Awḳāf* (based on the two preceding works); part transl. in B. ADDA and E. D. GHALIOUNGHĪ, *Droit Musulman. Le waḳf*, Alexandria 1893.

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- 'ALĪ IBN KHALĪL AL-ṬARĀBULUSĪ (d. 844/1440), *Mu'in al-Ḥukkām fīmā yataraddad bayn al-Khaṣmayn min al-Aḥkām*.
- IBN AL-SHIḤNA (d. 921/1515), *Lisān al-Ḥukkām fī Ma'rifat al-Aḥkām*.

Māliki:

- IBN FARḤŪN (d. 799/1397), *Tabṣirat al-Ḥukkām fī Uṣūl al-Aḳḳīya wa-Manāhij al-Aḥkām*.

Works on furūq:

- J. SCHACHT, *Aus zwei arabischen Furūq-Büchern, Islamica*, ii/4 (1927), 505-37 (extracts from one Ḥanafī and one Ḥanbalī work, with an introduction on the literature of *furūq*):

Mālikī:

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- IBN NUJAYM (d. 970/1563), *Kitāb al-Ashbāh wal-Naẓā'ir* (Ḥanafī).
SUYŪṬĪ (d. 911/1505), *Kitāb al-Ashbāh wal-Naẓā'ir* (Shāfi'ī).
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Works on technical terms:

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IBN 'ARAFĀ (d. 803/1401), *Kitāb al-Ḥudūd al-Fiḫhiyya* (Mālikī).
NAWAWĪ (d. 676/1277), *Tahdhīb al-Asmā' wal-Lughāt* (second part; the first part is a dictionary of proper names occurring in works of Islamic Law) (Shāfi'ī).
TAḤĀNAWĪ (wrote 1158), *Kashf* (or *Kashshāf*) *Iṣṭilāḥāt al-Funūn* (a general dictionary of technical terms).

Works on ikhtilāf:

- ABU YŪSUF (d. 182/798), *al-Radd 'alā Siyar al-Awzā'i*, and *Ikhtilāf Abī Ḥanīfa wa-bn Abī Laylā* (polemical).
SHAYBĀNĪ (d. 189/804), *Kitāb al-Ḥujaj* (polemical).
ṬABARĪ (d. 310/923), *Kitāb Ikhtilāf al-Fuḳahā'* (consisting mostly of extracts from the works of his predecessors; only two fragments of this very extensive work have survived).
ṬAḤĀWĪ (d. 321/933), *Sharḥ Ma'āni 'l-Āthār* (the author argues from the Ḥanafī point of view).
'ABD AL-WAḤḤĀB AL-BAQHDĀDĪ (d. 422/1031), *al-Ishrāf 'alā Masā'il al-Khilāf* (a Mālikī handbook).
IBN RUSHD AL-ḤAFĪD (Averroes, the philosopher; d. 595/1198), *Bidāyat al-Mujtahid* (cf. R. BRUNSCHWIG, 'Averroès juriste', in *Études d'orientalisme . . . Lévi-Provençal*, i, Paris 1962, 35-68); part translations: A. LAÏMÈCHE, *Du mariage et de sa dissolution*, Algiers 1926; the same, *Des donations, des testaments, des successions, des jugements*, Algiers 1928; the same, *Livre des échanges*, Algiers 1940; G.-H. BOUSQUET, 'Le livre de l'interdiction', R.A. 1949, 41-49.
SHA'RĀNĪ (d. 973/1565), *al-Mizān al-Kubrā* (derived from Muḥammad ibn 'Abd al-Raḥmān al-Dimashqī [wrote 780/1378], *Raḥmat al-Umma*, a Shāfi'ī handbook); transl. M. PERRON, *Balances de la loi musulmane*, Algiers 1898.
Kitāb al-Fiḫh 'alā 'l-Madhāhib al-Arba'a (a modern handbook; i², published by the Egyptian Ministry of Wakfs, Cairo 1931; ii²-iv, by 'ABD AL-RAḤMĀN AL-JAZĪRĪ, Cairo 1933-8; has not been completed).

STUDIES: I. GOLDZIEHER, *Die Zāhiriten*, Leipzig, 1884, 37-39; the same, 'Zur Litteratur des Ichtilāf al-madzāhib', *Z.D.M.G.* xxxviii (1884), 669-82; F. KERN, 'Tabarī's Ichtilāf al-fuqahā', *ibid.* lv (1901), 61-95.

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Hanafī ṭabaḳāt

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MUḤAMMAD 'ABD AL-ḤAYY AL-LAKNAWĪ (d. 1304/1886), *al-Fawā'id al-Bahiyya*.

G. FLÜGEL, 'Die Classen der hanefitischen Rechtsgelehrten', *Abh. Kgl. Sächs. Ges. Wiss.* viii (1860), 267-358.

Mālikī ṭabaḳāt:

IBN FARḤŪN (d. 799/1397), *al-Dibāj al-Mudhakḥab*; cf. E. FAGNAN, 'Les tabaḳāt malekites', *Homenaje a D. Francisco Codera*, Saragossa 1904, 105-13.

AHMAD BĀBĀ AL-TUMBUKTĪ (d. 1036/1627), *Nayl al-Ibtihāj* (a supplement to the preceding work).

MUḤAMMAD MAKHLŪF, *Shajarat al-Nūr al-Zakiyya*, 2 vols., Cairo 1349/1930-1350/1931.

R. CASTEJÓN CALDERÓN, *Los juristas hispano-musulmanes*, Madrid 1948.

Shāfi'ī ṭabaḳāt:

TAJ AL-DĪN AL-SUBKĪ (d. 771/1370), *Ṭabaḳāt al-Shāfi'iyya al-Kubrā* (cf. G. MAKDISI, *S.I.* xvii (1962), 57-80).

F. WÜSTENFELD, *Der Imām al-Schāfi'ī und seine Anhänger*, i-iii, Göttingen 1890-91 (separately printed from *Abh. Ges. Wiss. Göttingen*, xxxvi-xxxvii).

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IBN ABĪ YA'LĀ (d. 526/1133), *Ṭabaḳāt al-Ḥanābila*.

IBN RAJAB (d. 795/1392), *Ṭabaḳāt al-Ḥanābila* (a supplement to the preceding work).

Collections of biographies of *kāfīs* are numerous; see the works of Waki' and Kindī, above p. 224, and further:

KHUSHANĪ (d. 371/981), *Kitāb al-Ḳudāt bi-Ḳurṭuba*.

NUBĀHĪ (8th/14th century), *Tārikh Ḳudāt al-Andalus*, ed. E. Lévi-Provençal, Cairo 1948.

IBN ḤAJAR AL-'ASKALĀNĪ (d. 852/1449), *Raf' al-Isr'an Ḳudāt Miṣr*.

IBN ṬULŪN (d. 953/1546), *Ḳudāt Dimashq*, ed. Ṣalāḥ al-Dīn al-Munajjid, Damascus 1956.

5 *Selected Sources on uṣūl:*

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LIST OF ABBREVIATIONS

- A.D.C.S.L.* *Annuario di Diritto Comparato e di Studi Legislativi.*
- A.F.D.I.* *Annales de la Faculté de Droit d'Istanbul.*
- A.H.D.O.* *Archives d'Histoire du Droit Oriental.*
- A.I.E.O.* *Annales de l'Institut d'Études Orientales (Algiers).*
- A.I.U.O.N.* *Annali dell' Istituto Universitario Orientale di Napoli.*
- A.J.C.L.* *American Journal of Comparative Law.*
- B.E.O.* *Bulletin d'Études Orientales (Institut Français de Damas).*
- B.S.O.A.S.* *Bulletin of the School of Oriental and African Studies.*
- C.O.C.* *Cahiers de l'Orient Contemporain.*
- E.I.* *The Encyclopaedia of Islam (see p. 216).*
- G.A.L.* *C. Brockelmann, Geschichte der arabischen Literatur (see p. 261).*
- IBLA* *Revue IBLA (Institut des Belles Lettres Arabes, Tunis).*
- I.C.* *Islamic Culture.*
- I.C.L.Q.* *International and Comparative Law Quarterly.*
- I.Q.* *The Islamic Quarterly.*
- J.A.* *Journal Asiatique.*
- J.A.L.* *Journal of African Law.*
- J.A.O.S.* *Journal of the American Oriental Society.*
- J.C.L.* *Journal of Comparative Law.*
- J.P.H.S.* *Journal of the Pakistan Historical Society.*
- J.R.A.S.* *Journāl of the Royal Asiatic Society.*
- J.R.C.A.S.* *Journal of the Royal Central Asian Society.*
- M.A.I.D.C.* *Mémoires de l'Académie Internationale de Droit Comparé.*
- M.E.J.* *The Middle East Journal.*
- M.S.O.S.* *Mitteilungen des Seminars für Orientalische Sprachen.*
- M.W.* *The Muslim World.*
- O.L.Z.* *Orientalistische Literaturzeitung.*
- O.M.* *Oriente Moderno.*
- R.A.* *Revue Algérienne, Tunisienne et Marocaine de Législation et de Jurisprudence (unless otherwise indicated, the references are to Section i: Doctrine).*
- R.E.I.* *Revue des Études Islamiques.*
- R.H.* *Revue Historique de Droit Français et Étranger.*
- R.I.D.A.* *Revue Internationale des Droits de l'Antiquité.*
- R.I.D.C.* *Revue Internationale de Droit Comparé.*

LIST OF ABBREVIATIONS

287

- R.I.E.E.I.* *Revista del Instituto Egipcio de Estudios Islámicos.*
R.M.D. *Revue Marocaine de Droit.*
R.M.M. *Revue du Monde Musulman.*
R.J.P.U.F. *Revue Juridique et Politique de l'Union Française.*
R.S.O. *Rivista degli Studi Orientali.*
S.D.H.I. *Studia et Documenta Historiae et Iuris.*
S.I. *Studia Islamica.*
W.I. *Die Welt des Islams.*
Z.D.M.G. *Zeitschrift der Deutschen Morgenländischen Gesellschaft.*

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 'Urwa ibn al-Zubayr, a scholar of Medina, 31.
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 'Uthmān, caliph of Medina, 17.
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 written documents, in pre-Islamic
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INDEX AND GLOSSARY OF ARABIC TECHNICAL TERMS

- '*abd*, male slave, 127.
ābiḥ, runaway slave, 135.
'āda, custom, 62.
adab al-ḥādī, the duties of the *ḥādī*, a subject of special works, 83, 114.
'adl, (pl. '*udūl*', q.v.), of good character, 122, 125, 128, 140, 189, 193, 200.
'afw, pardon, 178, 181.
al-ahkām al-khamsa, 'the five legal qualifications', 20, 120 ff.
ahkām sulṭāniyya, constitutional and administrative law, subject of special works, 114.
ahl al-kitāb, unbelievers who possess a scripture, 131 f.
ahliyya, capacity, 124.
ajal, term, 118.
ajir, hired servant, 155.
ajnabi, 'stranger', third party, 194.
ajr, wage (used in a wider meaning in the Koran), 8, 154.
'akār, immovables, 136.
'akd, contract, 145.
'akīl, sane, 124.
'akīla, 126, 132, 155, 160, 161, 181 ff., 184, 186 (q.v. for definition), 189.
'aql, 'reason', the result of systematic thought, 46.
ama, female slave, 127.
'amal, practice, 30, 33, 61; '*amal* of Medina, 61 f.; 'judicial practice', 61 f., 84, 102, 109, 114, 210.
amān, temporary safe-conduct, 131, 206.
amāna, trust, deposit, fiduciary relationship: in the Koran, 12; in Islamic law, 137, 140, 147 f., 156, 157.
'amd, deliberate intent, 124, 181 f., 185 f.
'amīl al-sūḥ, inspector of the market, 25, 55 n. 1.
amīn, a person in a position of trust (*amāna*), 147, 189.
arabūn, earnest money, 9.
- 'ariyya*, loan of non-fungible things, 134, 157, 168.
arsh, a penalty for certain wounds, 185, 187.
'arūs resmi, a tax on brides in the Ottoman Empire, 89.
'asaba, (roughly) the agnates, 161, 170 ff., 184.
ashbāh wa-nazā'ir, 'similarities', the systematic structure of the law, subject of special works, 114.
asīl, the principal, 120; principal debtor, 158.
asī, the nature of a transaction (opp. *wasf*), 121.
'awl, reduction of shares of heirs, 172.
'ayn, thing, substance, 125, 134, 205.
- badal*, consideration, 148.
bāligh, of age, 124.
barā'a, 153 (q.v. for definition).
bātil, invalid, null and void, 121, 123, 134 f., 163.
bāṭin, the 'inward' state, 123 n. 1.
bay', sale, exchange, barter, 146, 151 ff.
bay' al-'arṭayl, a contract of barter in dates, 40, 154.
bay' *al-dayn bil-dayn*, exchange of obligation for obligation, 146.
bay' al-'uhda, *bay' al-wafā'*, sale of real property with the right of redemption, 78.
bay'atān fi bay'a, 'double sale', a group of devices for evading the prohibition of interest, 79.
bayt al-māl, public treasury, 125.
bayyina, evidence, 192.
bughāt, rebels, 187.
- daf'*, *noxas deditio*, 128.
dallas, to conceal a fault or defect, 9.
damān, liability, 39, 147.
dāmin, liable, 147.
dār al-ḥarb, enemy territory, 132.

- dār al-Islām*, the territory of the Islamic state, 132.
- darak*, default in ownership, 139.
- darāra*, necessity (as a dispensing element), 84.
- da'wā*, claim, lawsuit, 189.
- dayn*, debt, claim, obligation, 134, 144 f., 146.
- dawshirna*, a forced levy of non-Muslim children in the Ottoman Empire, 89.
- dhawu l-arḥām*, (roughly) the cognates, 170.
- dhimma*, engagement, undertaking, 130; care as a duty of conscience, obligation, 144.
- dhimmi*, non-Muslims who are protected by a treaty of surrender, 130 ff., 156, 191 f., 194.
- dhukr* or *dhukr ḥakk* (pl. *adhkār*, *adhkār ḥukūḥ*), written document, 82 n. 1.
- dhul-yad*, possessor, 136.
- dīwān*, army list, 186; records of the tribunal, 189.
- ḍiyya*, blood-money, 185.
- ḍiyāna*, conscience, *forum internum*, 123.
- dukkūl*, consummation (of marriage), 161.
- faql māl bilā 'iwaḍ*, unjustified enrichment, 145 f.
- faḳīh* (pl. *fuḳahā'*), the specialist in *fiḥh* (q.v.), 1.
- farā'id*, the portions allotted to the heirs, succession in general, 114, 170 ff.
- farḍ*, duty, 121.
- farḍ*, fixed share of an heir, 170.
- fasād al-zamān*, the (ever-increasing) corruption of contemporary conditions, 84, 202.
- fāsīd*, defective, voidable, 121, 123, 135, 146, 152, 163, 167, 178.
- fāsīk*, sinner (opp. 'adl), 125, 179, 189.
- faskh*, cancellation, 121, 148, 152, 154.
- fatwā*, the considered legal opinion of a *muftī* (q.v.), 73 f.
- fidā'*, 128 (q.v. for definition).
- fiḥh*, the science of the *shari'a*, the sacred Law of Islam, 1.
- fuḍūlī*, unauthorized agent, 122, 159.
- fuḳahā'* (pl. of *faḳīh*), the religious lawyers of Islam, 1, 28.
- furū'*, the 'branches', positive law, as opposed to *uṣūl* (q.v.), 59, 65.
- furūḥ*, legal distinctions, 205; subject of special works, 114.
- ghabn fāḥish*, 'grave deception', fraud, 117.
- ghā'ib*, absent, 188.
- ghalla*, proceeds, 134.
- ghanīma*, booty, 136.
- ghavar*, risk, hazard, uncertainty, 135, 146 f.
- ghaṣb*, usurpation, 160, 168, 200.
- ghāṣib*, usurper, 160.
- ghayr ma'lūm*, not known, 135.
- ghayr mamlūk*, that in which there is no ownership, 134.
- ghurra*, indemnity for causing an abortion, 124, 186.
- ḥabs*, imprisonment, 175, 187, 197.
- ḥabs*, retention of a thing in order to secure a claim, lien, 140.
- ḥadāna*, care of the child by the mother, 167.
- ḥadd* (pl. *ḥudūd*), a fixed punishment for certain crimes, 38 f., 86 n. 1, 91 f., 95 n. 1, 118, 120, 132, 148, 151, 158, 163, 175 ff. (q.v. for definition), 178 ff., 184, 187, 197, 198, 199.
- ḥadīth* (pl. *aḥādīth*), a formal tradition deriving from the Prophet, 34.
- ḥadr*, *hadar*, not protected by criminal law, 184 (opp. *ma'ṣūm*).
- ḥajr*, interdiction, 125, 126, 129.
- ḥakam*, arbitrator, 7 f., 10 f., 24, 189.
- ḥakḥ ādamī*, private claim (as opposed to a right or claim of Allah), 113, 160, 176 f.
- ḥakḥ Allāh*, right or claim of Allah (as opposed to a private claim), 113, 176.
- ḥalāl*, not forbidden, 121.
- ḥarām*, forbidden, 121, 123.
- ḥarbi*, enemy alien, 131, 184.
- ḥawāla*, transfer of debts, 78, 106, 148 f., 158.
- hiba*, donation, 157 f.
- ḥirz*, custody (of things), 134, 179 f.
- ḥisba*, the office of the *muhtasib* (q.v.), 52, 114, 207 f.

- ḥiyal* (pl. of *ḥīla*), legal devices, evasions, 78 ff., 83 f., 114, 200, 206, 210.
- ḥukm* (pl. *aḥkām*), 'qualification' 124; see also *al-aḥkām al-khamsa*.
- ḥukm al-ḥawz*, *ḥukm (aḥkām) al-man'*, or *al-man'a*, *ḥukm al-fāghūt*, tribal customary law of the Bedouins in Arabia, 77.
- ḥukūma*, a penalty for certain wounds, 186.
- ḥurr*, free person, 127.
- ibrā'*, acquittance, 148.
- 'idda*, waiting-period of a woman after termination of marriage, 118, 166, 168.
- idhn*, 'permission', extension of the capacity to dispose, 126.
- ijā'*, fulfilment (of an obligation), 148.
- ih̄tiyāf*, (religious) precaution, 123.
- iḥyā' al-mawāt*, cultivating waste land, 141.
- ijāb*, offer (as a constitutive element of a contract), 22, 145.
- ijāra*, hire and lease, 21, 22, 126, 134, 154 f., 191.
- ijāza*, approval, *ratihabitio*, 122.
- ijmā'*, consensus, 30, 60 f., 64, 67, 114; *ijmā' ahl al-Madīna*, consensus of the scholars of Medina, 61.
- ijtihād*, 'effort', the use of individual reasoning (also *ijtihād al-ra'y*), later restricted to the use of *ḥiyās* (q.v.), 37, 46, 53, 69 ff., 102, 104, 115, 202, 211.
- ikāla*, reversal (of a sale), 148, 154.
- ikhtilāf*, disagreement, 67, 114.
- ikhtilās*, 180 (q.v. for definition).
- ikhtiyār*, 202 (q.v. for definition), 204.
- ikrāh*, duress, 117 f.
- ikrār*, acknowledgement, confession, 151.
- ilā'*, oath of abstinence from intercourse by the husband, 164.
- ilkā'* *bil-ḥajar*, an aleatory transaction, 147.
- imām*, leader, 17; caliph, 130, 141, 182 f., 187, 197, 206.
- imām ma'ḥūm*, infallible *imām*, title assumed by Ibn Tūmart, 65.
- imdā'*, ratification, 121, 152.
- 'ina*, a device for evading the prohibition of interest, 79, 153.
- ishāra ma'hūda*, 'gesture', conclusive act, 117.
- ishtirāk*, joint ownership, 137.
- iskāf*, relinquishment (of a claim), 148.
- isnād*, the chain of transmitters of a tradition, 34.
- istibrā'*, waiting-period of a female slave after a change of owner, 118, 166.
- istifā'*, receiving (taking possession), 138.
- istighlāl*, acquisition of proceeds, 137.
- istiḥbāb*, 'preference', a synonym of *istiḥsān* (q.v.), 37.
- istiḥkāk*, vindication, 139.
- istiḥsān*, 'approval', a discretionary opinion in breach of strict analogy, 37, 40, 46, 60 f., 62, 115, 146 n. 1, 152, 155, 157, 179, 183, 204.
- istilā'*, occupancy of a *res nullius*, 136.
- istirdād*, vindication, 139.
- istiṣḥāb*, a method of legal reasoning particular to the Shāfi'i school and to the 'Twelver' Shiites, 21.
- istiṣlāḥ*, taking the public interest into account, 21, 60, 61, 62, 109, 115, 204.
- istiṣnā'*, contract of manufacture, 155.
- 'iḥ*, *i'tāḥ*, manumission, 129 f.
- 'iwāḍ*, countervalue, 145, 152.
- jā'iz*, allowed, unobjectionable, 121 f.
- jam'*, 162 (q.v. for definition).
- jāriya*, female slave, 127.
- jināya* (pl. *jināyāt*), tort, delict, 128, 176, 177 f., 181 ff., 197, 198.
- jizya*, poll-tax, 131.
- ju'l*, reward for bringing back a fugitive slave, 159 f.
- juzāf*, undetermined quantity, 147.
- kaḥḍ*, taking possession, 138.
- kaḥūl*, acceptance (as a constitutive element of a contract), 22, 145.
- kaḍā'*, judgments given by the *kaḍā'* *forum externum*, 123, 196.
- kaḍā'*, the district, circumscription, of a *kaḍā'*, 90.
- kaḍā'*, payment (of a debt), 148.
- kaḍhf*, false accusation of unchastity (unlawful intercourse), 125, 166, 175, 177, 179 (see also 13, 14 n. 1).

- ḥādī*, the Islamic judge, 4, 10, 16, 21, 24 ff., 37, 44, 50 ff., 54, 56, 74 f., 83, 84, 86 ff., 90 ff., 93, 95, 97, 103, 106 f., 108, 110, 114, 122 f., 125, 127, 130, 133, 139, 161, 165, 168, 173, 175, 177, 188 ff., 193 ff., 200, 207, 210.
- ḥādī l-jamā'a*, a judicial office in Islamic Spain, 55 n. 1.
- ḥādī l-ḥudāt*, the chief *ḥādī*, 50 f., 55 n. 1.
- kaḥā'a*, equality by birth, 162.
- kaḥāla*, suretyship, 158.
- kaffāra*, religious expiation, 129, 159, 165, 181 f., 183, 185, 207.
- kaḥīl*, guarantor, surety, 158.
- kāfir*, unbeliever, 131.
- kāhīn*, soothsayer, 8, 10.
- kānūn*, 'law', used of secular acts, 87; the administrative law of the Ottoman Empire, 90.
- kānūn-nāme*, a text containing one or several *kānūns*, 54, 84, 91, 208.
- ḥarāḥ*, loan of fungible objects for consumption, 157.
- ḥasāma*, a kind of compurgation, 24 n. 2, 184, 192, 197, 203.
- ḥayd*, aim, purpose, 181.
- ḥāsim*, divider of inheritances, 189.
- ḥaf' al-ḥarīk*, highway robbery, 9, 175, 180.
- ḥatīb*, secretary of the *ḥādī*, 'clerk of the court', 21, 25, 189.
- ḥatīl*, homicide, 181.
- ḥawād*, retaliation, 181.
- ḥawā'id*, 'rules', the technical principles of positive law, subject of special works, 114.
- ḥalwa*, privacy (between husband and wife), 161.
- ḥarāj*, land-tax, 131.
- ḥhārij*, 'stranger', third party, 139, 194.
- ḥaḥm*, party to a lawsuit, 190.
- ḥhaḥa'*, mistake, 181 f., 187.
- ḥhiyāna*, embezzlement, 180.
- ḥhiyār*, *optio*, right of rescission, 118, 121, 145, 148, 152 f., 154, 155, 169.
- ḥhiyār al-sharḥ*, stipulated right of cancellation, 106, 153.
- ḥhul'*, a form of divorce, 164.
- ḥhūsūma*, litigation, 189.
- ḥhīma*, value, 152.
- ḥhīmī*, non-fungible, 136.
- ḥhīyā*, 'allusion', implicit declaration, 116.
- ḥhīyās*, retaliation, 120, 181, 184, 198.
- ḥhīma*, division, 139.
- ḥhīyās*, analogy, parity of reasoning, 21, 37, 46, 60, 114, 157, 208.
- laḥīf*, foundling, 159, 166.
- lāzim*, binding, 121, 139.
- lī'an*, 165 (q.v. for definition), 168, 179, 195, 197, 203.
- liḥḥ*, robber, 9.
- luḥaḥa*, found property, 137.
- madhhab* (pl. *madhāhib*), 'school' of religious law, 59 n. 1.
- ma'dhūn*, a slave who has been given permission to trade, 128 f.
- ma'dīn*, mine, 136.
- ma'dūd mutakārib*, things that can be counted, 136.
- maḥḥūd*, missing person, 124.
- maḥārim*, see *maḥram*.
- maḥḥar*, minutes, the written record of proceedings before the *ḥādī*, 83, 189.
- mahr*, nuptial gift, 38 f., 161, 163, 167, 178, 191, 192, 195, 197.
- 'fair' or average *mahr* defined, 167.
- maḥram* (pl. *maḥārim*), a person related to another within the forbidden degrees, 129, 162, 167, 180, 184.
- majhūl*, unknown, 147.
- majlis*, 'session', meeting of the parties, 145, 164.
- majnūn*, insane, 124.
- makīl*, *kaylī*, things that can be measured, 136.
- makrūh*, reprehensible, disapproved, 121 f.
- maks*, market dues in pre-Islamic Arabia, 8; illegal taxes in Islamic law, 76.
- ma'ḥāl*, 'reasonable', the result of systematic thought, 46.
- māl*, *res in commercio*, 134, 135, 152, 205.
- māl manḥūl*, *māl nakīl*, movables, 136.
- malasā*, the reverse of 'uhda (q.v.), 8.
- mālik*, owner, 136.
- ma'lūm*, 'known', certain, 118, 147 (opp. *ghayr ma'lūm*, *majhūl*, qq.v.).
- mamlūk*, male slave, 127.
- mandūb*, recommended, 121.

- manfa'a* (pl. *manāfi'*), proceeds, usufruct, 126, 134, 205.
- mansūm*, 'decree', used of modern, secular acts, 87.
- mashrū'*, recognized by the law, 121.
- maşlahah*, the public interest, 61.
- mastūr*, 125 (q.v. for definition).
- ma'sūm*, inviolable, protected by criminal law, 184 (opp. *hadr*).
- ma'tūh*, idiot, 124.
- maukūf*, in abeyance, 119.
- mawālā*, the patron, or the client, 40, 130, 133, 170.
- mawlawī*, term used in India for a Muslim scholar of religious law, 95.
- mawzūn*, *wazn*, things that can be weighed, 136.
- maysir*, a game of hazard, 12 f., 146.
- mayta*, animals not ritually slaughtered, 134.
- mazālim*, see *nazar fil-mazālim*.
- milk*, ownership (also in a wider meaning), 136, 178, 179.
- milk al-'amma*, public property, 134, 141.
- mithl*, just mean, average, fair, 154, 167, 201.
- mithli*, fungible, 136.
- mu'āmala*, 'transaction', euphemistic term for a device for evading the prohibition of interest, 79.
- mu'āmalāt*, pecuniary transactions, 145.
- mu'āwaḍa māliyya*, exchange of monetary assets, 119, 120, 145.
- mubāh*, indifferent (neither obligatory/recommended nor reprehensible/forbidden), 121.
- mubāra'a*, a form of divorce, 164.
- mubham*, ambiguous (declaration), 117.
- mudabbar*, a slave who has been manumitted by *tadbir* (q.v.), 129, 135, 169, 186.
- mudāraba*, sleeping partnership, 119, 156 f.
- mudda'ā 'alayk*, defendant, 189.
- mudda'i*, claimant, plaintiff, 189.
- mufāwaḍa*, unlimited mercantile partnership, 116, 132, 156.
- muftī*, bankrupt, 198.
- muftī*, a specialist in religious law who gives an authoritative opinion, 27, 73 f., 90, 93, 95, 126.
- muḥākala*, a contract of barter in corn, 9, 146, 154.
- muḥṣan*, 125 (q.v. for definition), 178, 179.
- muḥtakir*, speculator on rising prices of food, 188.
- muḥtasib*, the Islamic inspector of the market, 25, 52, 55 n. 1, 84, 92, 114, 190, 207.
- mujtahid*, a qualified lawyer who uses *ijtihād* (q.v.), 37, 65, 71 f.
- mukallaf*, (fully) responsible, 124, 131, 179, 182.
- mukallid*, a lawyer who uses *taqlīd* (q.v.), 71.
- mukātaba*, manumission by contract, 42, 125, 129 f., 158.
- mukdīab*, the slave who has concluded this contract, 42 f., 129 f., 135, 136, 174, 186.
- mukhāḥara*, a device for evading the prohibition of interest, 78 f.
- mulāmasa*, an aleatory transaction, 147.
- mulāzama*, personal supervision (of defendant by plaintiff, &c.), 197.
- munayyiz*, 'intelligent', 'discriminating' minor, 125, 192.
- munābādha*, an aleatory transaction, 147.
- murābaha*, resale with a stated profit, 154.
- murtadd*, apostate, 138.
- musāḳāt*, a contract of lease of agricultural land, 119, 155, 156.
- mushā'*, joint ownership, 138.
- mustahabb*, recommended, 121.
- musta'min*, an enemy alien who has been given an *aman* (q.v.), 131.
- mut'a*, temporary marriage, 163.
- mut'a*, indemnity payable in certain cases of repudiation, 167.
- muta'arīf*, customary, 144.
- muwāḍa'a*, 'understanding', term for a document used in connexion with *hiyal*, 83.
- muwakkil*, the principal (as opposed to the agent), 120.
- muwālāt*, contract of clientship, 133, 170.
- muzābana*, a contract of barter in dates, 40, 146, 154, 205.
- muzāra'a*, a contract of lease of agricultural land, 119, 155, 156.
- nafaqa*, maintenance, 167.
- nāfiḥ*, operative, 121.

- nafy*, banishment, 187.
nahb, robbery, 180.
nā'ib, deputy in matters of worship, 119.
nasi'a, delay, 153.
nashk, repeal (*nāsikh*, the repealing passage; *mansūkh*, the repealed one), 115.
nazar fil-mazālim, 'investigation of complaints', 51, 54, 84, 189, 208.
nikāh, marriage, 161.
niyāba, proxy in worship, 119.
niyya, intent, 116 f., 118, 123.
niẓām, *nizām-nāme*, 'ordinance', used of modern, secular regulations, 87.
nukūl, refusal (to take the oath, &c.), 190, 197.
rabb, owner, 136.
rabb al-māl, sleeping partner, 156.
raḍā', fosterage, 162.
rahn, pledge, pawn, security, 8, 12, 39, 138, 139 f.
raḥaba, substance, also the person (of a slave), 127, 129, 134, 205.
raḥīq, slaves, 127.
ra's al-māl, capital, 153.
rashwa, bribery, 188.
rasūl, messenger, 119.
ra'y, 'opinion', individual reasoning, 26, 37, 46, 53, 60, 70.
ribā, 'excess', interest, 12, 40, 145 ff., 153 f., 155, 157.
riḍā, consent, 117.
rikāz, treasure, 136.
rujū', withdrawal, revocation, retractation, 145, 151, 158, 177; return, 157.
ruḥbā, an archaic form of donation, 8, 158.
rukn (pl. *arkān*), essential element, 118.
ṣabi, minor, 124.
ṣadāq, nuptial gift, 161.
ṣadaqa, charitable gift, 137, 158, 205.
ṣafih, irresponsible, 125.
ṣafka, 8, 145 (q.v. for definition), 146.
ṣaghīr, minor, 124.
ṣāhib al-sūk, inspector of the market, 25.
ṣāhih, valid, legally effective, 121 ff., 190.
sahm, fixed share of an heir, 170.
ṣakk (pl. *ṣukūk*), written document, 78, 82 n. 1, 193.
salam, contract for delivery with prepayment, 106, 119, 147, 153, 155.
ṣarf, exchange (of money and precious metals), 154.
ṣariḥ, explicit (declaration), 116.
sariḥa, theft, 175, 179.
sa'y, *si'āya*, 129 (q.v. for definition).
shahāda, testimony, evidence of witness, 192, 194.
shāhid (pl. *shuhūd*), witness, 193.
shar', *shari'a*, the sacred Law of Islam, 1, and *passim*; opposed to *siyāsa*, administrative justice, 54 f.
sharik, partner, 139, 155.
sharika, *shirka*, society, partnership, 119, 155 f.
sharikat māl, association in property, joint ownership, 138, 156.
sharḥ (pl. *shurūḥ*), prerequisite, condition, 118; stipulation, 145.
shaykh al-Islām, the chief *mufti* of a country, 74; in the Ottoman Empire, 90.
shibh, quasi, 181 f., 185 n. 1.
shirā', purchase, 151.
shubha, 163, 176 (q.v. for definition), 178, 179 f.
shuf'a, pre-emption, 94, 106, 142, 192, 194.
shurb al-khamr, wine-drinking, 175, 179.
shurṭa, police, 50.
shurūḥ (pl. of *sharḥ*), 'stipulations', legal formularies, 82 n. 1, 83 f., 114, 210.
sijill, written judgment of the *kāḍī*, 83, 189.
simsār, broker, 78, 120.
siyāsa, 'policy', administrative justice, 54, 86 f., 91, 187.
siyāsa shar'iyya, *siyāsa* within the limits assigned to it by the *shari'a*, 54.
subashī, chief of police in the Ottoman Empire, 90, 92.
sufṭaja, bill of exchange, 78, 149.
sulh, amicable settlement, 148, 181.
sulṭān, authority, dominion, ruling power, 206.
sunna, precedent, normative legal custom: in pre-Islamic Arabia, 8; in early Islam, 17; in the ancient schools of law, 30 f., 33; according

- to Shāfi'i, 47, 59; according to Ibn al-Muḳaffa', 55; according to Ibn Tūmart, 64.
sunna of the Prophet, 17 f., 33 f., 43, 47, 53, 60 f., 67, 114.
sunna of Abū Bakr and 'Umar, 18.
sunna, recommended, 121.
- ta'addī*, fault, illicit act, tort, 140, 147 f., 157.
ṣabakāi, biographies of lawyers arranged by 'classes' or generations, subject of special works, 114.
tadbīr, manumission which takes effect at the death of the owner, 129.
tafrīk, a dissolution of marriage, 165.
tafiwīd, 164 (q.v. for definition).
tahāṭuf, 191 (q.v. for definition).
tahātur, conflict of equivalent testimonies, 195.
tahdīd, threat, 117.
taḥlīl, a device to remove an impediment to marriage, 81 f.
tājir, trader, merchant, euphemistic term for the money-lender, 79.
taḥābuḍ, taking possession reciprocally, 138, 152.
taḥiyya, simulation, 118.
taḥlīd, reference to the Companions of the Prophet (in the ancient schools of law), 32, 47; reliance on the teaching of a master, 58 f., 65, 71 ff., 102, 115, adopting the doctrine of a school of law for a particular transaction, 68 n. 1.
ṣalāk, repudiation, 163 f., 165 n. 1.
taḥfīk, combining the doctrines of more than one school, 68 n. 1, 106.
ta'lik al-ṣalāk, form of conditional repudiation, 164.
tamlīk fil-ḥāl, immediate transfer of ownership, 119.
tāmm, complete, 152, 157.
tanazzuh, religious scruple, 123.
taḥṣu, an Ottoman fiscal institution of land law, 90.
ta'rif, 187 (q.v. for definition).
tarikā, estate, 169.
tasallum, taking delivery, 138.
taṣarruḥ, capacity to dispose, 124; disposition, 145.
taḥbīb, bi-sabab, indirect causation, 181, 182.
- taslim*, delivery, 138.
tauba, repentance, 176.
tawliya, resale at the stated original cost, 153 f.
ta'zir, discretionary punishment awarded by the *ḫāḍi*, 88, 91, 132, 175, 178 f., 180, 184, 187, 197, 207 f.
thaman, price, 152.
thiqa, a trustworthy person, 83.
ṣiḥ, small child, babe-in-arms, 124.
- '*udhr*, excuse (for non-fulfilment of a contract of *ijāra*), 154.
'*udūl* (pl. of *ādī*, q.v.), professional witnesses, 'notaries', 194.
'*uhda*, a guarantee against specific faults in a slave or an animal, particular to the Māliki school, 8.
ujra, hire, rent, 154.
'*uḥr*, 178 (q.v. for definition).
'*uḫūba*, a Māliki punishment in certain cases of homicide, 185 n. 1, 207.
'*ulamā*', the religious scholars of Islam, 28, 84, 87 f., 89, 102, 105, 110.
umm walad, female slave who has borne a child to her owner, 129, 135, 166, 169, 178, 186.
'*umrā*, donation for life, 8, 158.
'*uḥf*, custom, 62, 136.
uṣūl (sing. *asīl*), or *uṣūl al-fikḥ*, the 'roots' or theoretical bases of Islamic law, 48, 59 ff., 71, 114 f.
- wadi'a*, deposit, 157.
wadi'a, resale with a rebate, 154.
wājib, (1) obligatory, 121; (2) definite, binding, due, 22, 121 f.
wakāla, procurator, 120, 156.
wakf, pious foundation, mortmain, 19, 76 f., 80 n. 1, 83, 90, 93, 94, 96 f., 101 f., 103, 108, 114, 125 f., 134, 142, 160, 205, 209.
wakil, deputy, agent, proxy, 120; attorney, 190.
walā', the relationship of client and patron, 40, 130.
wali, legal guardian, 120, 161 f., 165.
wali al-dam, the next of kin who has the right to demand retaliation, 181, 184.

wara', religious scruple, 123.

wārith, heir, 170.

wasf, the circumstances of a transaction (opp. *asi*), 121.

wasī, executor and/or guardian appointed by testament, 120, 173.

wasīyya (pl. *wasāyid*), legacy, 173 f.

wathīka (pl. *wathā'ik*), written document, 82 n. 1, 193.

wilāya, competence, jurisdiction, 188.

wukūf, abeyance (of rights and legal effects), 119.

yad, possession (also in a wider meaning), 136.

yamin, oath (undertaking), 159.

zāhir, the literal meaning (of Koran and traditions), 63 f.; the 'outward' state, 123 n. 1.

zakāt, alms-tax, 105, 206.

zawj, husband; *zawja*, wife, 161.

zihār, 165 (q.v. for definition), 203.

zinā, unchastity (unlawful intercourse), 175, 177, 178 f., 198.