Appendix B: Fatwās Chapter One

Translation of *Fatāwā Ibn Rushd* # 299, p. 1030

Question 299. Concerning someone who owed a man some dīnārs, payed him the weight of the dīnārs in pieces of gold jewelry of the same or of lesser gold quality.

And as to the second question, it concerns a man who owed another man some dīnārs. He paid the man the weight of the dīnārs in pieces of gold jewelry of the same, or of lesser weight/quality than the dīnārs, without charge (*ʿāda*), condition, or specified number (*ʿidda*). When the weight of each dīnār was examined separately, however, some were found to be more complete than others (*awfā min baʿḍ*). If one hundred of them were gathered on a balance with the stone weight, the weight may prove correct or may come short. Furthermore, what is to be done if the man settled the debt using Murābiṭī dīnārs instead of ʿAbbādī ones?

The answer: I have examined this, your question, and have considered it carefully. As to being paid in pieces of gold jewelry that quantitatively exceed or fall short of the weight of the corresponding dīnārs (*tajūzu ʿadad*^{an} *ḥulīy dhahab bi-wazn danānīrihi mithl ʿaynihi*), this is not permissible because of the absence of an equivalence (*mumāthala*) with the original object of the pledge (*maʿal-qaṣad ilā al-mubāyaʿa*), and the resulting discrepancy between [the original] intentions [of the parties].

As to the settlement of a debt with Almoravid gold in substitution of ʿAbbādī gold, on the other hand, this is permissible, because the surplus (*faḍl*) in this exchange is one sided, when the ʿAbbādī gold falls short in quality or weight. In God – may He be exalted – is success. He has no equal.

Translation of *Fatāwā Ibn Rushd* #333, p. 1095–1097

Question 333. Concerning pieces of jewelry (*ḥulīy*) cast in pure, impure, and counterfeit gold (*al-khāliṣa wa-ghayr al-khāliṣa wa-l-maghshūsha*).

And [Ibn Rushd] – may God be contented with him – was asked a question concerning jewelry and this is the text: Give us your answer – may God be contented with you – concerning gold cast for jewelry for the adornment of women, according to the different standards of gold (*ʿalā ikhtilāf ʿiyyārāt al-dhahab*): the pure, noble metal (*ṭīb khāliṣ*) with no impurities, the kind that is partial or half gold, and that which is of an eighth, two-thirds, three-fourth, seven-eighths gold and the like. These standards are

known to experts and merchants of gold, from whom a little added or subtracted cannot be concealed.

Also, people's objectives in acquiring gold are various. There is he who wants the noble kind as treasure for savings (*li-zamānihi*) and as ornament for his women. Others desire the kind widely available, which is bought and sold according to people's wealth or lack of means. Then there is he who goes for the lowest standard. His objective is slightness of weight at maximum size and insignificant price.

Noble gold is heavy in weight, contemptible (*ḥaqīr*) to the eye, and great in price.

So – may God grant you success – is the sale of gold for dirhams, across this range of standards, permissible or not? And is it permissible to weigh these different qualities of gold by the pound (*al-murāṭala*), against non-minted gold (*al-ghayr al-maskūk*), weight for weight, one amount for another (*yad bi-yad*) or not? Is it permissible to weigh the noble kind by the pound excluding the lesser kind? Or the lesser excluding the noble? Or is it permissible across the range of standards? And is a judge entitled to prevent people from acquiring jewelry of a quality lesser than the noble kind? Does he have the right to keep goldsmiths (*ṣāgha*) from their smithing, for others or for themselves? And does this apply equally for he who smiths his gold for his own use as it does for he who does so to sell? May a judge destroy the non-noble jewelry that is in people's possession, to devalue it and compel people to acquire exclusively gold of the noble kind? Clarify for us what is the obligatory course to be taken in this matter – may you be rewarded and thanked, if God so wills. May He be exalted.

The answer: So [Ibn Rushd] – may God grant him success – answered this question with this text: I have studied – God have mercy upon us – your question and I have informed myself regarding it. The smithing of jewelry from pure and impure gold, alloyed with (*mashbūh bi*) silver, brass, and copper is permissible (*jā'iz*) and its use is allowed if it is characterized as you have described. For God, glorified and exalted, said: "Would they attribute to God females who adorn themselves with trinkets and are powerless in disputation?"[1] Likewise, a person is allowed to procure it in quantities as treasure for his time when *zakāt* has been paid on it (if it has reached the minimum amount on which the *zakāt* must be paid) or when that person has other wealth added to it and he incurs the obligation of *zakāt* on it. Furthermore, its sale as merchandise (*bi-l-ʿurūḍ*) is permissible, for specie and on credit (*ilā ajal*), as it is permissible to sell it for silver and dirhams, one amount for another (*yad bi-yad*).

As to weighing some of it against other gold by the pound (*al-murāṭala fī baʿḍihi bi-baʿḍ*) or just against pure, minted gold, this is only permissible for the pure kind, excluding the lesser. It is also not proper (*lā yanbaghī*) to prohibit goldsmiths from working their trade for people, for pay, or for themselves, to sell or use, because all of this activity is lawful and permissible. As it is also not permissible to destroy what is in

1 Qur'ān 43: 18.

people's possession, because it is their property, and because smithed jewelry is a kind of merchandise (*ʿarḍ*) that those who circulate it for commerce provide in payment of the *zakāt*. Indeed, the only gold that must be destroyed and prohibited from being wrought is that which is counterfeit, with an outer layer of gold but an interior of brass or copper. In God is success. He has no equal.

Translation of *Fatāwā Ibn Rushd* #320, p. 160–170

Question 320. From among the questions concerning exchange (*ṣarf*) and where oath-taking is obligatory upon a shortcoming of dirhams in an exchange (*ʿalā naqṣ dirham*^{in} *fī-hi*)?

And [Ibn Rushd] – God be contented with him – was also written to from the capital city of Marrakesh with a question concerning exchange and the text of the question is as follows: Your answer – may God be contented with you – concerning a man who exchanged dīnārs for dirhams from another man. Having taken the dirhams, the exchanger of the aforesaid dīnārs for dirhams rose and left with them but then claimed that the dirhams were short of the number for which he had exchanged the dīnārs. "So I returned the dirhams and there was a dirham missing." The individual who bought the dīnārs from him then said: "On the contrary, I paid you the full amount." The individual who took the dirhams then said: "The dirhams did not leave my hands. You have paid me a lesser amount." Where should the oath-taking take place in this situation? Should it take place at the congregational mosque or not? Clarify this for us, may you be rewarded and thanked.

The answer: So Ibn Rushd – God grant him success – answered this by saying: I have studied – God have mercy on us – this, your question, and have informed myself on it. And oath-taking in this case is specifically required at the congregational mosque (*tataʿayyanu fī al-masjid al-jāmiʿ*) because the matter, based on what the receiver of the dirhams has claimed (*yaʾūlu bi-mā adʿāhu qābiḍ al-darāhim*) concerning the shortcoming of their amount, may result in the eventual invalidation of the exchange of the full amount of dīnārs. In God is success.

Translation of *Fatāwā Ibn Rushd* # 300, p. 1031–1032

Question 300. Concerning someone who disagrees with his companion regarding a payment over an amount of a value of less than a quarter dīnār; also concerning someone of whom an oath is required regarding the value of a defect of less than a half-dīnār: Is the oath obligatory? And is the ruling affected by the expiration of the item?

And as to the third question, it concerns two men who rescinded a sale (*taqāyalā*) in the order of a quarter dīnār and upwards. They then disagreed, however, over the settlement of the payment (*fī al-taqāḍī*). The seller said: "You still owe me (*baqiya liyy ʿalayk*) an eighth of a dīnār." The buyer said: "I already paid it to you. It was included with the total price of the merchandise." Is oath taking at the congregational mosque obligatory in this case or not? What, on the other hand, should be done if one of the men bought merchandise from the other, and the buyer proceeded to sue the seller for a defect in the merchandise (*qāma ʿalayhi bi-ʿayb*), and the seller, in response, claimed he had disclosed the existence of the defect to the buyer, which the latter denied. The value of the defect being less than a quarter dīnār, where is oath taking obligatory? And is the ruling affected by the expiration of the merchandise?

The answer: I have examined this, your question, and have informed myself about it. As to the person who is owed less than a quarter dīnār and to whom it was claimed he had already been paid, this does not necessitate oath-taking in the congregational mosque. As to the person who sued over the defect – of which the seller claimed innocence – of a value of less than a quarter dīnār for merchandise bought for a value of more than a quarter dīnār, if the merchandise is extant it is obligatory that it be returned with the defect. This action requires an oath in the congregational mosque.

This is as when two parties to a contract of sale (*mutabāyiʿān*) disagree over the price of the merchandise by a margin of less than a quarter dīnār and the merchandise is extant. They are mutually bound to take oaths at the congregational mosque, as opposed to when the merchandise has expired. This and none other is what is correct.

And it appears in the book of Ibn al-Mawwāz, in the version (*fī samāʿ*) of Ibn al-Qāsim, in the chapter on defects (*Kitāb al-ʿuyūb*) of the *ʿUtbiyya*, concerning the summoning of buyer and seller when there is a defect of outer appearance in merchandise, in a manner contrary to what we have stated above. The only correct stance is that which I have explained above. In God is success.

Translation of *Fatāwā Ibn Rushd* #298, p. 1027–1029

There is an introductory paragraph for a series of three questions (298–300), embedded in the text of question 297. It reads: A group of jurists from the capital city of Marrakesh – may God protect it – wrote to Ibn Rushd in the final months of 515, asking questions regarding three problems. Below is the text of these questions in its entirety. The response to each is appended.

Question 298. Concerning a disagreement between texts regarding testimony in cases of divorce.

The first question concerns a ḥadīth in the chapter of belief in divorce in the *Mudawwana*, on the authority of Abū al-Zinād and Ibn Shihāb, concerning the testimony of three men regarding another man's divorce pronouncement. One testifies to the fact that the man has pronounced the repudiation three times, another twice, and yet another once, the last thereby omitting two previous divorce pronouncements (*taṭlīqatayn*). In another copy (*nuskha*) of the *Mudawwana*, however, the men testify to the man's divorcing separately: one testifies that he has repudiated his wife once, another says he has done so twice, and another three times. As a result, it is accepted that he has accumulated only two pronouncements of divorce.

The answer: I have examined this, your question. And what you mention regarding the disagreement occurring in different copies of the *Mudawwana*, concerning the *ḥadīth* of Ibn Shihāb, has no effect on the ruling required in cases in which one individual alleges that the testimony of another is false. The requirement for an allegation of fabrication of testimony is that two pronouncements of divorce be enjoined, just as it appears in the *ḥadīth* of Ibn Shihāb in the *Mudawwana*, in accordance with the school (*madhhab*) of Ibn al- Qāsim in his transmission from Mālik, in which a different position not found in other transmissions [is embraced, and which] disregards the dating of each witness's testimony.

This position maintains that the witnesses' disagreement or agreement upon the date is to be disregarded, since dating has no bearing upon one who gives false testimony. This is because were it obligatory to accept the testimony of the one single witness concerning the specification of the day in which he witnessed the divorce, then it would be necessary to accept his testimony, by itself. When the testimony of the divorce's date by the single witness is not accepted, it follows that no single testimony should be permitted to stand alone in the assignment of a date (*fī-mā infarada bihi min al-ta'rīkh*), and that the date should not be considered, having no effect, and not being an established requirement for divorce.

Do you not consider that the *'idda* only begins from the day that the divorce ruling is passed, irrespective of whether the witnesses dated their testimony? Were two witnesses to concur on a date, that would require that the *'idda* begin from that date. Therefore the distinction al-Lakhmī makes in his *Tabṣira*, regarding the differentiation between whether the dating of the witness testifying to three repudiations occurs after the date given in the testimony of the two concurring witnesses, or before both, or one of the two, is not sound. Likewise, his stating that there is a difference when dates are absent, and his asking whether this enjoins two or three repudiations, is also not sound. This is because it is wrong to exceed a determination of two repudiations on doubtful grounds. This is furthermore unsound because there is no disagreement in the school over a judge (*ḥākim*) not deciding against one who disclaims an accusation when there is doubt (*bi-shakk*). Indeed, disagreement exists only over whether a judge

shall decide against an individual, when there is doubt, when this individual corroborates this doubt upon himself. In God is success.

Translation of *Fatāwā Ibn Rushd* #541, p. 1475–1479

Question 541. Concerning one whose goodness, piety, fairness, and trustworthiness have been attested, but about whom a contract was then made public, implying that he said he had married someone who was three-times divorced from him, but whom he nevertheless remarried. What if the contract were in his handwriting? And what ruling should ensue in this matter? Would this amount to the invalidation of his testimony?

The judge of the capital city of Marrakesh, Mūsā b. Ḥammād – may God grant him prosperity –, wrote to [Ibn Rushd] – may God be pleased with him – asking about a man about whom it was testified that he had married a certain woman (*fulāna*) from whom he was three-times divorced, but married anyway. She remained married to him close to fourteen years. The text of the question is as follows:

Please give us your answer – may God be pleased with you – to a question concerning a man who married a woman in a town (*balda*), consummated the marriage with her, and remained with her for a period of three years, or thereabouts, in that town.

He then moved away from the town with the aforesaid wife to another town and established residence there for a period of ten years. A group of witnesses from this town testified that they had not seen from this man, from the time he settled in the town, anything but goodness, amiability (*al-ʿāfīya*), trustworthiness, good faith (*amāna*), virtue (*faḍl*), and piety (*al-diyāna*). This became confirmed by the judge of that town, leading to the acceptance of his testimony. The judge would deliver rulings based on his testimony, concerning all manner of legal claims (*ḥuqūq*), and regularly employed him as a witness in passing judgments. The situation of the aforesaid man continued, as has been established, and as stated above, for five years or thereabout, during which time there arose no conflict concerning what had been established about the man in the first instance. The aforementioned judge still kept up with the affairs of this individual and sought to remain knowledgeable about his situation during the aforementioned period of years, during which no lack of piety was seen from him nor lapse found.

Concerning this man, however, the aforementioned judge was then presented with a legal deed (*ʿaqd*), containing testimony about himself, which stated that when he married a certain daughter of so-and-so (*fulāna bint fulān*) she was three-times divorced from him, and in no way not lawful for him to marry, since he had thereby forbidden her to himself. This woman was the one he was still married to, and had remained so close to fourteen years. The judge queried the man about the testimony in

the aforementioned contract and the latter disavowed it. The judge then established the veracity of this disavowal. But several witnesses then testified that the script of the aforesaid contract was that of the man's own hand. So the judge summoned him again to respond to what had been testified against him (*aʿdhara ilayhi al-qāḍī fī-man shahida ʿalayhi bi-dhālika*). The man maintained that he had vindicating defense (*al-madāfiʿ*) by which their testimony against him would be dropped. The judge (*al-ḥākim*) thus, based on the man's claim, granted him a deferral [to substantiate his claim].

What – may God grant you prosperity – should the judgment concerning the testimony of this man be, if he is unable to substantiate the plea he claims to have, and it is ruled against him that the aforementioned divorce be implemented? Is he thereby recused (*yujraḥu*), his testimony rejected, and the marriages contracted in which he served as one of two witnesses invalidated? Or is he not recused as a witness on account of the existing jurisprudential disagreement concerning this question? Also, what should the ruling regarding his testimony be, if this man testifies during the period of deferral that was set for him, and he requests that a judgment be passed based on his testimony, and that it be implemented with its confirmation (*wa-l-mukhāṭaba bi-thubūtihā*). Does he have the right to this or not? Clarify this for us – may you be rewarded and granted success, if God so wills.

The answer: And [Ibn Rushd] – may God be pleased with him – answered to this question in this his text: I examined your question and informed myself about it. And if the veracity of what is in the deed that was presented to the judge concerning the aforesaid man is established by the testimony of the witnesses he employed, and the man is unable to present a defense to that, then, my opinion is that what is stated in the deed should be implemented, separating the couple.

This is what I consider the correct interpretation of the known doctrines of the school: That this does not constitute an invalidation (*jurḥa*) that nullifies his testimony, unless he corroborates the fact that he married her after he swore, under oath of irrevocable divorce (*al-ṭalāq al-batta*), that he would not remarry her, and that he did so believing this unlawful, as an insolence against God – may He be glorified and exalted. This is the case since, were he to corroborate the contract in the first place, saying that he married her, after irrevocable divorce under oath, only because he believed this to be permissible on account of the disagreement among scholars concerning this matter, he should then be forgiven for what he did. It thus does not constitute an invalidation that nullifies his testimony. This is especially the case if he has studied Islamic science (*naẓara fī al-ʿilm*) or heard ḥadith.

If it is possible (*iḥtumila*) that he married her after swearing by irrevocable divorce that he would not remarry her in this manner, and that he denied it under oath, only for fear of what would be determined against him by it, leading to the couple's separation, according to the prevalent doctrine of the school, then it is not acceptable that he be recused, based [merely] on a possibility (*bi-amr muḥtamal*). This is especially the

case if his situation is as you described, and he is known for righteousness and prominence of integrity. And if the validity of the deed brought against him is established only by the testimony that is in his handwriting, then he is not to be judged by it if he disavows it, and the couple is not to be separated.

This is the case even if he is unable to provide an [exculpatory] plea against the testimony of those who testified that the contract was in his handwriting, because testimony of handwriting is not admissible in cases of divorce, manumission, marriage, or in any *ḥadd* case, according to what is stated by Ibn Ḥabīb in the *Wāḍiḥa*, among others. And were he to corroborate that he wrote it in his handwriting but claimed that he did not write it with the intention of implementing it on himself but that he wrote it only as consultation and study (for had he wanted to implement it on himself he would have done so), and that he never implemented the deed and brought no witnesses to testify to it, then he should be believed in this, according to what is stated in the *Mudawwana*, among others. And in God – may He be exalted – is success. He is peerless.

Translation of *Fatāwā Ibn Rushd* # 319, p. 1065–1068

Question 319. Concerning the weak and very ill (*kathīr al-amrāḍ*) man who wishes to remove a major ritual impurity with sand (*al-tayammum min al-janāba*) and to wipe (*masḥ*) over the turban. Should this be permitted of him? And does it matter whether the major ritual impurity (*janāba*) is lawful or unlawful?

And Ibn Rushd – May God be pleased with him – was written to (*khūṭiba*) from the capital city of Marrakesh, with a lengthy question in which he was asked about a weak and very ill man who, in performing his ablutions, wanted to transfer the obligation of wiping (*masḥ*) the head to wiping his turban, as well as, in his ritual cleansing (*al-ṭuhūr*), from performing the major ablution with water (*al-ghusl*) to cleansing with sand (*al-tayammum*). The text of the question from beginning to end is as follows:

In the name of God, the Compassionate, the Merciful, please give us your answer – may God be pleased with you – to a question concerning a man, weak of body and brain, who, when he wished to wipe his head to perform ablutions, found that this augmented his illness, catching the worst cold he'd ever caught. Given his situation, is it his obligation then to wipe over the turban without removing it or not?

Because of the aforementioned condition, he is afflicted by attacks of illness, exacerbating the weakness that bedevils him. When these crises afflict him, he is unable to perform ablutions with water, even if hot, and fears catching cold from the wind. Should he then cleanse himself with sand, being in the described condition, and is his obligation in it to cleanse with sand (*al-tayammum*) or not? Otherwise what should he do? Also, were he to have relations with his wife (*law aṣāba ahlahu*) while in this condi-

tion, should he cleanse his major ritual impurity with sand, so long as the condition persists? Does this suffice?

If the major ritual impurity has been incurred by touching his wife, then, as in the aforementioned case, and the individual has been unable to wash his head with water for three to four months, more or less, due to his weakness and fear of becoming ill by pouring water on his head, whether hot or cold, is it, then, his obligation, in this situation, to wash with water (*ghusl*) or, rather, to wipe (*masḥ*) his head without water and wash his body with water? Otherwise what should he do? Go over this for us, step by step – may you be rewarded, if God so wills.

We came across this problem – may God prolong your success –, and the jurists discussed it until it was complicated by the question of the effect of the man, in the condition described above, incurring the major ritual impurity through sin (*aṣabathu janābat*^{un} *min maʿṣiyya*) – may God forgive us in His grace and compassion. The question became: what should be done then? Some of the jurists said: "He will have no dispensation (*rukhṣa*) in that." And they compared it analogically (*qāsuhā*) to the problem of the traveler who has traveled with unlawful design (*al-musāfir safara al-maʿṣiyya*), who may not shorten his prayers, nor break the fast, nor eat carrion (*lā yaqṣuru wa-lā yafṭuru wa-lā yaʾkulu al-mayta*) if obliged to.

Others said: "It is not like the question of the traveler traveling with unlawful design, and there is dispensation for him concerning the wiping of his head on the basis of the aforesaid weakness, regardless of whether the major ritual impurity was incurred lawfully or unlawfully." They continued: "This is because, concerning travel with unlawful design, shortening the prayer, breaking the fast, and eating carrion is prohibited in one of two accounts (*qawlayn*), only because thereby he may be heartened in pursuing the unlawful design upon which he is intent. The question of washing (*ghusl*), on the other hand, is not like this, since the unlawful behavior has concluded, and the wiping (*masḥ*) therefore becomes allowed (*murakhkhaṣ*), while he is not persisting in the unlawful behavior or has taken it up again. God is most knowing.

Clarify for us, by your favor, this last question as well – may you be rewarded – what is correct regarding it and explain that to us clearly – May God reward and bring you success, by His omnipotence and compassion. There is no lord but Him.

The answer: Ibn Rushd – God grant him success – answered to this, all of it, by this, his text: I have studied – God have mercy on us – this, your question, and have informed myself on it. There is no dispensation for this man, concerning what he described of weakness of body and brain, to wipe over his turban to perform ablutions (*wuḍūʾ*). This is the case almost under any circumstance, unless there is a wound on his head that prevents him from wiping in any way whatsoever, because the fears you described of what will afflict him are farfetched. For it is a temptation from Satan who should not be heeded.

When he has acted in this manner, it is obligatory that he perform ablutions and resume (*iʿāda*) prayer, always. Likewise, what you said of him being afflicted by crises, which exacerbate his weakness, making him unable to perform ablutions with water, whether hot or cold, fearing the wind, well, these are fears instilled by Satan and woe to him whose faith is corrupted by him! There is no dispensation whatsoever for him to commute his ablution to cleansing with sand in this situation. For this is not one of the difficulties from which God has chosen to unburden his servants in faith, when He said: "And laid on you no burdens of the faith."

As to he who has had relations with his wife (*aṣāba ahlahu*), in the first situation, and has the ability (*sāʿ*) to commute to cleansing with sand, fearing for himself when pouring water over his head, it is not permissible for him to wipe his head while washing the rest of his body. His ability to have relations with his wife, while in this condition, provides proof that the weakness of his body and brain have not brought him to the point in which he can't wipe his head with water in performing ablution.

In that manner, for one who has had relations with his wife, as in the second situation, and is afflicted by crises, exacerbating an existing weakness, cleansing with sand, fearing for himself when washing, is more excusable than is the case in the first situation.[2] And there is no difference concerning the requirement to wash (*ḥukm al-ghusl*) between whether this obligation was incurred through lawful or unlawful action. In God is success.

Translation of *Fatāwā Ibn Rushd* # 535, p. 1462–1464

Question 535. Concerning a Christian who converts and publicly professes Islam, about whom it is then learned that he remains Christian.

Mūsā b. Ḥammād, qāḍī of the capital city (*ḥaḍra*) of Marrakesh wrote to him – may God be pleased with him – from Marrakesh asking about a Muslim man about whom rumors were circulating that he professed the religion of the Christians, which lead to an investigation into the matter.

The text of the question is as follows: Please give us your answer – May God be pleased with you – to a question concerning a man who was a Christian, who then converted to and publicly professed Islam, and after which it was reported that he remained of the Christian religion, in spite of his public profession. This was much talked about, so it was taken to the ruler (*sulṭān*), which required an investigation of his actual circumstance. His house was inspected, and in it was found a room (*bayt*)

2 Ibn Rushd understands there being two medical conditions or individual situations implicit in the question. I am not sure I see that in the text, but the operative issue appears to be the time sequence between sexual relations and the crises or attacks (or just the head injury).

[decorated] like a church, in which there was a chamber (*ḥaniya*) facing east, more narrow than the rest of the room. There was no base for a bed in the chamber, and in it there was a hanging lamp and numerous relics (*āthār*) to which candles were attached. In his residence, books written in the Christian script and many candles were found, along with a board on four legs shaped like a stretcher (*maḥmil*), a staff with a crossing piece of wood at the top of a span of the hand or more in length, and small, flat, round pieces of bread which have dried, and each of which bore an impression.

Two witnesses who have knowledge of the conditions of the Christians and the matters of their law (*umūr sharaʿihim*) testified that the aforementioned candles were of the kind that Christians favor (*yataqarrabūna bihā*) and which they bring to their priest in order to light them in their services of worship (*mutaʿabbidihm*). They also testified that the board which is on four legs was of the kind upon which a priest of the Christians places the Gospel (*al-injīl*) when he reads it, that the staff at the top of which is a crossing piece of wood was of the kind upon which a priest leans for support when he stands to read the Gospel, and that the aforementioned flat and round pieces of bread were the oblations which the Christians favor (*tataqarrabūna bihi*) when they complete their fast and which are to be found only in the possession of one of their religious leaders (*ʿinda aʾimatihim*).

Do you think – may God perpetuate your good fortune – that the aforementioned things, which were found in the residence of this man in spite of what had been heard of his public profession of Islam and suppression of his Christian religion, are evidence (*dalāʾil*) by which judgment can be passed (*yuqḍā bihā*) regarding his apostasy, since he publicly professed Islam until what was stated above was discovered of him? Should he be tried for apostasy or not? Clarify this for us, may you be rewarded, if God so wills.

The answer: [Ibn Rushd] – May God grant him prosperity – answered regarding this saying: I have studied and considered your question. If it is not proven (*idhā lam yuthbatu ʿalā*) that this Christian, who converted to Islam and publicly and willingly (*ṭāʾiʿan*) professed Islam, conceals (*yusirru*) his Christianity and practices it, by means of just and incontestable proof (*bi-bayyina ʿādila lā madfaʿ lahu fīhā*), then judgment of execution should not be passed on him on account of the objects found in his house, which Christians use to practice (*yashraʿu bihi*) their religion, without calling on him to repent (*istitāba*) for being an apostate.

This is the case even if it is most likely (*ghalaba ʿalā' l-ẓann*) that these belongings (*asbāb*) were present in his house, that he practiced with them (*yatasharraʿu bihā*) according the religion of the Christians, and that they do not belong to other Christians sharing quarters with him, or to those who frequent him (*aw yantābihu minhum*), particularly because of what you said concerning the rumor that this man persisted in his Christianity, in spite of his public profession of Islam, and that this was much talked about. And this is because *ḥudūd* punishments of execution and others are not applied (*lā tuqām*) on the basis of hearsay (*bi-l-sammāʿ*) or preponderant likelihood (*bi-ghala-*

bat al-ẓunūn). They are only applied on the basis of just proof witnessed by Muslims (*bayyina ʿādila min al-muslimīn*).

Do you not think that if an account about a Muslim man spread that he has drunk wine (*shārib al-khamr*), that it was found in his house, in his possession, and on his table time and again, that the *ḥadd* punishment for the drinking of wine should not be applied, even if (*wa-la'inna*) there is preponderant likelihood of his having drunk it? Or do you not think that if accounts of a man spread that he committed adultery with a woman who is a known adulteress (*fājira maʿlūma bi-l-fujūr*), and that she was found with him in his house where his door was closed with her in it for a period of time, that the *ḥadd* punishment must not be applied to him, even if (*wa-in*) there is preponderant likelihood regarding his seclusion with her for a period of time in which he may have committed adultery with her?

[For this reason] only painful punishment (*al-ʿuqūba al-mūjiʿa*) must be applied to one accused in such a case. Likewise, punishment must be applied to the one about whom you asked, due to the suspicion cast upon him stemming from the finding of those belongings which you described in his house. And only in God exalted is good fortune, He is peerless.