

The Structure of the *Kitāb al-mabsūt fī l-furūʿ* by the Hanafite Jurist al-Sarakhsī (d. 483/1090)¹

The following overview is limited to particularly significant points of law

Preliminary remarks (2 pp.)

Book: The prayer (*al-ṣalāt*) (397 pp.)

(...)

Book: Prostrating oneself (*al-sajda*) (7 pp.)

(...)

Book: The prayers during the nights of Ramadan (*al-tarāwīḥ*) (6 pp.)

Book: The alms tax (*zakāt*) (220pp.)

(...)

Book: Rare instances of *zakāt* (34 pp.)

Book: Fasting (*al-ṣawm*) (92 pp.)

(...)

Book: Rare instances of fasting (10 pp.)

(...)

Book: Menstruation (72pp.)

(...)

Book: The ceremonies (during the pilgrimage) (*al-manāsik*) (190 pp.)

(...)

Book: Marriage (*al-nikāḥ*) (265 pp.)

The marriage of minors (16 pp.)

The marriage of (adult) virgins (7 pp.)

The marriage of a non-virgin (1 p.)

The marriage without a guardian (15 pp.)

Representation on the occasion of the marriage (7 pp.)

Equality of birth (8 pp.)

Marriage of those under protection (*dhimmī*) (10 pp.)

The marriage of an apostate (*murtadd*) (2 pp.)

Marriage with persons not belonging to the Islamic sphere of influence (*ahl al-ḥarb*) (9 pp.)

The dower (32 pp.)

Recission rights and marriage (7 pp.)

¹ For his biography cf. Taştan, al-Sarakhsī, 239 ff.

- The infertile man (5 pp.)
 The *shighār* (two marriages linked by conditions) (2 pp.)
 The marriage of persons of equal birth (1 p.)
 Marriage with female and male slaves (12 pp.)
 Milk kinship (14 pp.)
 Good repute (*al-ihsān*) (6 pp.)
 Marriage for a limited period (*mut'a*) (2 pp.)
 410 The alleged marriage (4 pp.)
 Deception concerning whether the wife is free (2 pp.)
 Several marriages (20 pp.)
 Maintenance (18 pp.)
 Maintenance for a slave (2 pp.)
 Maintenance for a non-Muslim protected person (1 p.)
 Maintenance in the event of divorce, separation and marriage (6 pp.)
 Care and custody of children in the event of divorce (7 pp.)
 Use of household goods (5 pp.)
 Sharing between the (several) wives (5 pp.)
 Maintenance of relatives (8 pp.)
 Book: Divorce (*al-ṭalāq*) (295 pp.)
 Revoking (the declaration of divorce) (11 pp.)
 The divorced woman's period of waiting before remarriage, and moving out of
 the house (27 pp.)
 Refuting those who deny that unplanned divorce is null and void (1 p.)
 Dress and perfume of the widow (4 pp.)
 Compensation (*mut'a*) and bride price (9 pp.)
 Reasons for separation which are similar to those for divorce (16 pp.)
 Ruling out divorcing the wife (1 p.)
 Regarding the declaration of divorce (55 pp.)
 A mute's declaration of divorce (2 pp.)
 Witnessing the divorce (9 pp.)
 A sick man's divorce (15 pp.)
 Care and custody of children on the occasion of separation (2 pp.)
 The wife's contractual right to dissolve the marriage (*khul'*) (25 pp.)
 Release of the wife to ensure the divorce is effective (14 pp.)
 The right of withdrawal (*al-khiyār*) (11 pp.)
 Transferring the right to divorce onto the wife (3 pp.)
 Dissolving a marriage by means of *zihār*² (2 pp.)

2 Pre-Islamic form of divorce employing the formula *anti 'alayya ka-zahri ummi* – you are to me like my mother's back.

- Manumitting slaves in penance for *zihār* (10 pp.)
 Fasting in penance for *zihār* (2 pp.)
 Feeding the poor in penance for *zihār* (5 pp.)
 Dissolving a marriage by means of *ilāʿ*³ (20 pp.)
 Dissolving a marriage by means of a curse (*liʿān*⁴) (5 pp.)
 Witnessing a *liʿān* (6 pp.)
 Book: Manumitting slaves (*al-ʿitq*) (181 pp.)
 (...)

 Book: The partner in a redemption contract (*al-mukātab*) (80 pp.)
 (...)

 The redemption contract with an apostate (2 pp.)
 The *mukātab* as partner in a company and in the pre-emptive right (*shufʿa*) (3 pp.)
 Book: The relationship with clients (*al-walāʾ*) (45 pp.)
 (...)

 Book: Vows/oaths (*al-aymān*) (97 pp.)
 (...)

 Book: Quranic penal law (*al-ḥudūd*) (97 pp.)
 The confession of illicit sexual intercourse (*zinā*) (12 pp.)
 Bearing witness in a case of false accusation of illicit sexual intercourse (*qadhf*) (28 pp.)
 Book: Theft (*al-sariqa*) (72 pp.)

 Highway robbery (*qitāʿ al-ṭuruq*) (10 pp.)
 Book: Legal relations between Muslims and non-Muslims (*al-siyar*) (44 pp.)
 How the army deals with unbelievers (32 pp.)
 Acquiring the property of unbelievers that originated with the property of Muslims (26 pp.)
 Imposing the land tax (*kharāj*) 98 pp.)
 The treaty of submission (*al-ṣulḥ*) and the peace treaty (*al-muwāḍaʿa*) with the rulers (12 pp.)
 Marriage with inhabitants of territory not under Islamic rule, and merchants travelling to them with safety guaranteed (*amān*) (3 pp.)
 Apostates (26 pp.)
 The Kharijites/ 'those who walk away' in the civil war (*al-khawārij*) (24 pp.)
 Further chapter on spoils of war (9 pp.)

3 The husband's oath affirming that he has not had intercourse with his wife for at least four months.

4 Swearing that the spouse committed adultery.

- Book: The *istihsān*⁵ (40 pp.)
 The man who sees someone else killing his father or someone else (5 pp.)
 Book: Evaluation according to probability (*al-taḥarrī*) (24 pp.)
 Book: The foundling (12 pp.)
 Book: The find (14 pp.)
 Book: The fugitive slaves (*al-ubbāq*) (18 pp.)
 Book: The missing person (*al-mafqūd*) (15 pp.)
 Book: Robbery (59 pp.)
 Book: The deposit (*al-wadī'a*) (25 pp.)
 Book: The loan (*al-'ariya*) (18 pp.)
 Book: The company (*al-sharika*) (69 pp.)
 The general partnership (*al-mufāwada*) (4 pp.)
 The goods of a company partner (5 pp.)
 Litigation among company partners (30 pp.)
 The void company (4 pp.)
 Book: Hunting (36 pp.)
 Book: Sacrificial animals (25 pp.)
 (...)
 Book: The foundation (*al-waqf*) (20 pp.)
 Book: The gift (*al-hiba*) (71 pp.)
 Gifts with and without legal effect (11 pp.)
 The return gift (14 pp.)
 The testamentary gift (*al-ruqba*) (1 p.)
 Proof of the gift (2 pp.)
 Giving alms (*al-ṣadaqa*) (3 pp.)
 The gift (*al-'atīya*) (7 pp.)
 The gift of a sick man (7 pp.)
 Book: Sales and purchases (*al-buyū'*) (100 pp.)
 Forward purchase by proxy (*salam*) (16 pp.)
 Void purchase contracts (11 pp.)
 Conditional purchase contracts (15 pp.)
 Litigation concerning purchase contracts (10 pp.)
 The contractually agreed right to withdraw from a purchase (*khiyār al-shart*)
 (30 pp.)
 The right to withdraw that has not been agreed (*al-khiyār bi-ghayr shart*) (10
 pp.)

5 Source of the law/ method of deducing the law recognised by the Hanafite school, frequently employed to avert a more obvious analogy, cf. Part 1, 2.6 above.

- Resale with profit (*al-murābaḥa*) (13 pp.)
- Defects of the item purchased (39 pp.)
- Purchase contracts with *dhimmīs* (9 pp.)
- The sale of related persons (4 pp.)
- The sale of pregnant slaves (2 pp.)
- Manumitting (persons sold) (*al-istibrāʾ*) (14 pp.)
- Manumission when two sisters have been purchased (5 pp.)
- Further chapter concerning the right to withdraw (5 pp.)
- The purchase of palms with and without fruit (3 pp.)
- Damage sustained by the object of purchase at the hands of either the seller or the buyer before it changes hands (15 pp.)
- Increase or decrease of the object of purchase before it changes hands (6 pp.)
- The buyer taking possession with and without the seller's agreement (8 pp.)
- Book: The (monetary) exchange transaction (*al-ṣarf*) (88 pp.)
- The right to withdraw from an exchange transaction (2 pp.)
- The purchase of money made from base metal (*fulūs*⁶) (11 pp.)
- The loan and concomitant exchange (7 pp.)
- Providing a pledge for an exchange transaction (1 p.)
- The exchange transaction involving precious metals and the dust thereof (5 pp.)
- The exchange transaction concluded by a judge (2 pp.)
- The contract on working precious metals (2 p.)
- Theft of precious metals (4 pp.)
- The exchange transaction concerning deposits (2 pp.)
- The exchange transaction concerning weighable goods (2 pp.)
- The exchange transaction outside of territory under Islamic rule (4 pp.)
- The exchange transaction between the master and his slave (1 p.)
- Exchange transaction by proxy (7 pp.)
- Defect items in an exchange transaction (4 pp.)
- The compromise (decrease) in an exchange transaction (4 pp.)
- The exchange transaction during sickness (4 pp.)
- The contract regarding silver- or gold plating (*ʿamal al-tamwīn*) (14 pp.)
- Book: The pre-emptive right (*al-shufʿa*) (94 pp.)
- Proof in the context of the pre-emptive right (8 pp.)
- The concrete exercise of the right (4 pp.)
- The pre-emptive right as regards lands and waterways (9 pp.)
- The pre-emptive right regarding gifts (3 pp.)

6 Derived from the Byzantine bronze coin 'follis'.

- The pre-emptive right regarding purchase with conditional right to withdraw (3 pp.)
- Goods exempt from the pre-emptive right on the occasion of marriage and in other cases (5 pp.)
- The pre-emptive right in the business transactions of a sick man (4 pp.)
- Waiving the pre-emptive right (*taslīm al-shuḥḥā*) (7 pp.)
- The pre-emptive right of those leading an immoral life (*shuḥḥā ahl al-baḡhy*) (1 p.)
- Representation in cases involving pre-emptive right (8 pp.)
- The pre-emptive right among unbelievers (*shuḥḥā ahl al-kufr*) (7 pp.)
- The pre-emptive right in cases of compromise (3 pp.)
- The pre-emptive right regarding finds (1 p.)
- The pre-emptive right regarding buildings and others (8 pp.)
- Book: The apportionment of property (*al-qisma*) (72 pp.)
- The apportionment of real estate by means of buying out (parties involved) (2 pp.)
- Unequal apportionment of real estate without compensation (10 pp.)
- The apportionment of animals and goods (4 pp.)
- The right to withdraw in cases of apportionment (5 pp.)
- Carrying out the apportionment (8 pp.)
- Things that cannot be apportioned (5 pp.)
- The apportionment of a piece of real estate burdened with rights of way (5 pp.)
- The distribution of an inherited piece of real estate burdened with debts or a devise (6 pp.)
- 433 Maintaining a faulty apportionment (6 pp.)
- The apportionment at the hands of the executor among the legatees and heirs (5 pp.)
- Book: lease contracts (110 pp.)
- The contract for work and materials (19pp.)
- The occurrence of entitlement to wages (12 pp.)
- The broker (*al-simsār*) (2 pp.)
- Guarantee and suretyship for the entitlement to wages (3 pp.)
- Hiring a wet-nurse (12 pp.)
- The rent of premises (26 pp.)
- The rent of baths (5 pp.)
- Hiring herdsmen (6 pp.)
- Hiring movable goods (6 pp.)
- Hiring mounts (15 pp.)
- The binding effect of the rental contract (6 pp.)
- Proof in the context of rental contracts (3 pp.)

- The liability of the paid labourer (6 pp.)
- The rent of watermills (4 pp.)
- The rent (of pack camels on the way) to Mecca (5 pp.)
- The wages of paid labourers working in the house (2 pp.)
- Renting tents (7 pp.)
- The rent without legal effect (17 pp.)
- The rent for digging wells and ditches (4 pp.)
- The rent for erecting buildings (2 pp.)
- Hiring slaves to provide services and other things (6 pp.)
- The rent in the context of beating milk (*darb al-labān*) and other things (3 pp.)
- Book: The office of judge (*adab al-qāḍī*) (36 pp.)
- The judge writing to other judges⁷ (17 pp.)
- Book: Witness evidence (*al-shahāda*) (66 pp.)
- Affirmation by oath (*al-istiḥlāf*) (5 pp.)
- Exclusion from (giving) evidence (18 pp.)
- Counter-evidence (*al-shahāda 'alā l-shahāda*) (95 pp.)
- Women bearing witness (3 pp.)
- False witness (*shahādat al-zūr*) etc. (5 pp.)
- Evidence concerning descent etc. (9 pp.)
- The opponent's actions towards a witness (2 pp.)
- Evidence concerning purchase contracts (11 pp.)
- Quarrel between claimants (3 pp.)
- Contradictions in evidence given (6 pp.)
- Book: Retracting evidence (*al-rujū' an al-shahāda*) (47 pp.)
- Retracting evidence in cases of divorce and marriage (7 pp.)
- Further chapter on retracting evidence (9 pp.)
- Retracting evidence in connection with descent, clientage and inheritance (3 pp.)
- Retracting counter-evidence (3 pp.)
- Retracting evidence in cases of *ḥudūd*⁸ etc. (6 pp.)
- Further chapter on retracting evidence (2 pp.)
- Book: The lawsuit (*al-da'wā*) (156 pp.)
- The lawsuit concerning an inheritance (9 pp.)
- The evidence of protected persons (*dhimmīs*) concerning an inheritance (6 pp.)
- Contradictions concerning time and other issues in a lawsuit (10 pp.)

7 This concerns the question of whether, and in what cases, the deciding judge must preside personally at the hearing.

8 The *ḥudūd* refer to the penal law laid down in the Quran; cf. Part 1, 4.7.b above.

- The lawsuit concerning young animals (17 pp.)
 Evidence regarding birth and descent (5 pp.)
 414 Several persons laying claim to a plot (5 pp.)
 The lawsuit concerning walls and paths (10 pp.)
 Claiming an item giving different legal reasons (3 pp.)
 Claiming a child⁹ (21 pp.)
 The foundling (*al-laqīṭ*¹⁰), the slave and the unbeliever (18 pp.)
 Denying paternity of a child born of a slave woman and other things (5 pp.)
 The lawsuit brought by the seller (of a slave woman) and other things (3 pp.)
 The status of the children of a slave woman who has had several masters (5 pp.)
 The lawsuit brought concerning kinship (6 pp.)
 A sick man admitting paternity (3 pp.)
 The status of children of adultery and the legally effective marriage (8 pp.)
 Birth and bearing witness to it (10 pp.)
 Deception (concerning slave status) (18 pp.)
 Book: Acknowledgement (*al-iqrār*) (206 pp.)
 The acknowledgement of a debt by the partner in a *mufāwada*¹¹ (3 pp.)
 Acknowledging the rights of an unborn child (2 pp.)
 The right to withdraw in the context of acknowledgement (3 pp.)
 Acknowledging a loan (3 pp.)
 Acknowledging the figure of a debt in dirhams (3 pp.)
 Acknowledging a debt with ambiguous designation (6 pp.)
 Acknowledging a debt with reference to counterfeit money (*zuyūf*) (4 pp.)
 The realisation of an acknowledgement (10 pp.)
 Acknowledging a debt while sick¹² (7 pp.)
 The acknowledgement of a debt by the sick man with regards to heirs and
 others (7 pp.)
 The debts of a victim of wilful homicide (7 pp.)
 The acknowledgement of debts by the heir¹³ (7 pp.)
 Acknowledgement in the way of waiving the oath (3 pp.)
 Acknowledging debts with respect to items in joint ownership (8 pp.)
 Acknowledging a debt with respect to items not precisely specified (10 pp.)
 Acknowledging an acknowledgement undertaken during minority (3 pp.)

9 This refers to the prohibition against withdrawing a recognition of paternity.

10 This refers to persons not related by blood ties but received into the family being included in the provisions of inheritance law.

11 Corresponds on the whole to the general partnership.

12 This refers to possible circumvention of inheritance law.

13 This refers to the distribution of insolvent estate.

- Acknowledgement in the way of demand (3 pp.)
- Acknowledging the removal of an item from someone's possession, and exceptions (5 pp.)
- The acknowledgement with respect to something that is unknown or in doubt (11 pp.)
- The exception¹⁴ (11 pp.)
- Acknowledging a debt the sum of which is not specified (7 pp.)
- Acknowledging a specific debt, and then another one (3 pp.)
- The acknowledgement with respect to a sum of money paid by someone else (3 pp.)
- The acknowledgement with respect to demanding payment of asserted debts (6 pp.)
- The acknowledgement in the context of a limited partnership (*muḍāraba*) and of an (ordinary) partnership (*shirka*) (9 pp.)
- Acknowledging the non-existence of a debt etc. (5 pp.)
- Confessing criminal activities¹⁵ (1 p.)
- Concerning the acknowledgement (2 pp.)
- The acknowledgement of the executor and the trustee concerning the handling (of the items held in trust) (6 pp.)
- The acknowledgement in the context of a purchase contract concerning defective items (10 pp.)
- Acknowledging marriage and divorce (4 pp.)
- The acknowledgement of persons under legal disability (*al-mahjūr*) and of slaves (8 pp.)
- The oath¹⁶ and the acknowledgement of the status of a slave (9 pp.)
- Acknowledging that a marriage has been contracted (1 p.)
- The acknowledgement of a *mukātab* and a free man (2 pp.)
- Acknowledging the non-existence of claims against someone else (4 pp.)
- The acknowledgement in the context of manumission and a contract of redemption (3 pp.)
- The unbeliever's acknowledgement (3 pp.)
- The written acknowledgement (4 pp.)
- The acknowledgement with respect to rights to living beings (3 pp.)
- The alternative acknowledgement¹⁷ (1 p.)

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14 This refers to items excluded from the acknowledgement.

15 This refers to the payment of blood money (*diya*) as a consequence of the action.

16 This refers to the acknowledgement dependent on the oath sworn by the beneficiary.

17 This refers to the effectiveness of acknowledgements taking into account more than one entitled parties.

- The acknowledgement with respect to possessions of which the person acknowledging is a co-owner (3 pp.)
- The acknowledgement with respect to goods taken by others (2 pp.)
- Acknowledging one's own and other persons' shared debt (2 pp.)
- The acknowledgement when not in a state of (fatal) illness¹⁸ (4 pp.)
- The (creditor's) acknowledgement of having taken (what he is owed) 2 pp.)
- Book: Representation (159 pp.)
- Witness evidence in the context of representation (8 pp.)
- The judge's writing to the other judge concerning representation (4 pp.)
- Authorisation at the hands of an orphan's guardian (1 p.)
- Authorisation for property management, for collecting yields and for sales (8 pp.)
- Representation with respect to sale and purchase (29 pp.)
- Representation with respect to exchange transactions and to forward purchase (2 pp.)
- Representation in the context of enforcing a debt¹⁹ (11 pp.)
- Representation on the occasion of pledging goods (9 pp.)
- Representation on the occasion of the redemption of items held in trust or loaned (6 pp.)
- Representation in the context of a gift (4 pp.)
- Representation in the context of manumission and redemption contracts (9 pp.)
- Representation in the context of companies (*muḍāraba* and *shirka*) (4 pp.)
- Items for which representation is not admissible (3 pp.)
- Authorisation by the *ma'dhūn* and the *mukātab* (10 pp.)
- Representation on the occasion of the marriage (9 pp.)
- Representation of the husband in one-sided divorce (*ṭalāq*) and when the marriage is dissolved by *khul'* (8 pp.)
- Representation in the context of rent, joint cultivation of lands (*muzāra'ā*) and cooperation (6 pp.)
- Representation if unbelievers are involved (7 pp.)
- Representation in the context of talion law (*dam*) and compromise settlements (10 pp.)
- Representation in the context of settlements (regarding the payment of blood money) in cases of head injuries (7 pp.)
- Granting someone power of representation (2 pp.)

18 This refers mainly to the acknowledgement during an incurable illness.

19 This refers to the personal nature of representation and avoiding legal confusion.

- Book: Providing a guarantee (*al-kafāla*) (161 pp.)
- Providing a guarantee under escrow²⁰ (14 pp.)
- Providing personal guarantees (*al-kafāla bi-l-nafs*) in connection with vicarious liability in litigation²¹ (10 pp.)
- Slaves and minors providing personal guarantees (17 pp.)
- Providing real (estate) collateral (*al-kafāla bi-l-māl*) (7 pp.)
- Several persons providing personal guarantees (13 pp.)
- Providing a guarantee on the understanding that the debtor will be free of the guaranteed demand (*al-aṣīl*) (5 pp.)
- Creating a guarantee for future demands (3 pp.)
- The bill of exchange or promissory note (3 pp.)
- The money order (*al-amr bi-naqd al-māl*) (4 pp.)
- The compromise settlement on the realisation of guarantees (10 pp.)
- Determining the maturity date of guarantee and bill of exchange (5 pp.)
- The order regarding liability benefiting a third party (3 pp.)
- Providing a guarantee in the context of a legal action (7 pp.)
- The person paying determining the amount (5 pp.)
- The assignor's claim that the guaranteed demand arises out of trade in alcohol or usury (3 pp.)
- Debtors' imprisonment (4 pp.)
- Being exempt from the guarantee, and the gift to the assignor (2 pp.)
- One of several assignors acknowledging the obligation²² (3 pp.)
- The guarantee being dispensed with without being settled or falling vacant²³ (5 pp.)
- The oath in the context of the guarantee²⁴ (2 pp.)
- Cases in which a guarantee is not appropriate (10 pp.)
- The judicial document concerning the guarantee²⁵ (3 pp.)
- Witness evidence and oath concerning the promissory note and guarantee transaction (7 pp.)

20 This refers to the permissibility of fixing a date in case of default.

21 As to the function, this refers to the combination of an ordinary personal guarantee and a litigation guarantee.

22 This refers to issues of legal recourse among several assignors.

23 This refers to the effect disturbance in the secured contract will have on the hedging transaction.

24 This refers to the identity of an agreed liability (*ḍamān*) and the guarantee (*kafāla*).

25 This refers to the evidential value of investigations undertaken and documented elsewhere in a lawsuit.

- The guarantee towards several assignees in case the principal debt is not settled (2 pp.)
- The guarantee for particular items (6 pp.)
- Further chapter on the guarantee (8 pp.)
- Book: The compromise settlement (*al-ṣulh*) (112 pp.)
- The compromise settlement concerning real estate rights (*al-ʿuqār*) (9 pp.)
- The compromise settlement concerning the pre-emptive right (2 pp.)
- The void compromise settlement (6 pp.)
- Communal use of assets (*al-muhāyaʿa*) (9 pp.)
- The compromise settlement with the father, the executor and the heir (6 pp.)
- The compromise settlement concerning claims arising out of bequests (8 pp.)
- The compromise settlement concerning criminal actions²⁶ (17 pp.)
- Witness evidence in a compromise settlement (1 p.)
- The compromise settlement concerning a debt which is not defined as such (*dayn*) (7 pp.)
- The right to withdraw from a compromise settlement (4 pp.)
- The compromise settlement concerning a debt (9 pp.)
- The compromise settlement concerning forward purchase (13 pp.)
- The compromise settlement concerning claims arising from theft (*ghaṣb*) (6 pp.)
- The compromise settlement concerning claims arising from loan and safekeeping (3 pp.)
- The two impartial arbitrators (*al-ḥakamayn*)²⁷ (1 p.)
- Book: Pledging (*al-rahn*) (140 pp.)
- Cases of a lack of liability on the part of the pledgee (for the loss of the pledge) (9 pp.)
- Pledging by the executor and the father (6 pp.)
- Pledging living beings (12 pp.)
- Pledging silver for silver,²⁸ or according to weight and measure (11 pp.)
- Witness evidence on the occasion of pledging (10 pp.)
- Pledging by the *mukātab* and the slave²⁹ (16 ff.)
- Unbelievers involved in pledging (6 pp.)
- Pledging by a partner in a limited partnership or a *shirka* (4 pp.)
- Loans for the purpose of pledging (5 pp.)
- Pledging with several pledgees (4 pp.)

26 This refers to matters of talion law and blood money.

27 This refers to the effect of arbitration decisions and the subsequent judicial proceedings.

28 This refers to the identical monetary value.

29 This refers more generally to legal capability with reference to pledging.

- The killing of one pledge (the slave) by the other³⁰ (11 pp.)
- The pledger or pledgee being injured by the pledge (5 pp.)
- Other persons than the pledger or the pledgee being injured by the pledge (4 pp.)
- The injury of the pledge (3 pp.)
- Robbery of the pledge (7 pp.)
- The injury (of a third party) at the hands of the pledge during his tasks³¹ (9 pp.)
- Book: The limited partnership³² (*al-muḍārabā*) (170 pp.)
- Distributing a share of the profit among third parties (4 pp.)
- The limited partnership with items as deposit (6 pp.)
- The authority of the director (*muḍārib*) within the limited partnership (11 pp.)
- Sales and purchases undertaken by the director³³ (15 pp.)
- The director's reimbursement of expenses (*nafaqa*) (12 pp.)
- Resale with profit (*murābaḥa*) in a limited partnership (9 pp.)
- Sale undertaken by the director with subsequent purchase by himself at a lower price (3 pp.)
- Cooperation between the limited partner (who provides the capital) and the director (6 pp.)
- The disagreement between the partner and the director (10 pp.)
- Transferring (the limited partnership's) capital onto (another) limited partnership (7 pp.)
- Distributing (the profit) among the partner and the director (5 pp.)
- Manumission (of slaves who are part of the property deposited) at the hands of the director (10 pp.)
- Injury at the hands of a slave who is part of company property, and injury sustained by such a slave (5 pp.)
- Extent and limits of the director's authority (4 pp.)
- The limited partnership in which unbelievers are involved (7 pp.)
- Partnership interest (*shirka*) in a limited partnership (9 pp.)

30 This refers to the amount to which the criminal slave can be held liable as a pledge.

31 This concerns questions of redress and liability, if the pledge is abducted by someone else and a further party sustains damages due to the work performed by the pledge (e.g. digging a well, paving a path).

32 Defining this as a limited partnership has become customary; Bälz is, however, justified in pointing out that it is more similar to a silent partnership (Das internationale Vertragsrecht der islamischen Banken, WM 1999, 2443, 2444).

33 This refers to the respective authority in cases where there are several directors.

- The fatally ill director's acknowledgement with respect to the limited partnership³⁴ (6 pp.)
- The pre-emptive right in the context of the limited partnership (5 pp.)
- Contract clauses (*shurūt*) with respect to the limited partnership (4 pp.)
- Resale with profit between the director and the partner (5 pp.)
- The director's liability (2 pp.)
- Resale with profit between two limited partnerships (the same person being a partner in both of them) (6 pp.)
- Litigation between the director and the partner³⁵ (6 pp.)
- The loss of the partnership's assets before or after the transaction³⁶ (11 pp.)
- The partnership financing by way of credit at the request of the partner (8 pp.)
- Witness evidence in the context of the limited partnership (3 pp.)
- Book: The agricultural partnership (*muzāra'ā*)³⁷ (160 pp.)
- The *muzāra'ā* according to those who permit it (with profit shares of) half and a third (9 pp.)
- What the partner in a *muzāra'ā* (*muzāri'*) can prohibit/enforce after concluding an agreement (2 pp.)
- The *muzāra'ā* between co-owners of land (4 pp.)
- The *muzāra'ā* between landowner and agricultural worker with the provision that both contribute seeds (2 pp.)
- Agreeing how shares in the harvest are distributed in real terms to a shareholder (4 pp.)
- Contract clauses (*shurūt*) which render the *muzāra'ā* void, and clauses which do not have this effect (2 pp.)
- 418 Conditions of the contract determining the yield, ploughing the land and other matters (7 pp.)
- (Premature) termination (*'udr*) of the contract concerning the *muzāra'ā* and the demand (for fulfilling the terms) (12 pp.)
- (Premature) termination (*'udr*) of the contract concerning other agricultural cooperation (*mu'āmala*) (5 pp.)
- Options and limitations of single allocation to one of the partners (3 pp.)

34 This refers to the separation of the partnership's property from the private estate of the director.

35 This refers to the separation between the director's transactions on his own behalf, and that of others.

36 This refers to the question of whether the partner will have to contribute the lost amount again, in order to fulfil existing obligations.

37 This is a type of cooperation in which one partner provides the agricultural land and another carries out the actual farming.

- The contract concerning the *muzāraʿa* that includes alternative contractual clauses (*al-muzāraʿa ʿalā l-sharṭayn*) (6 pp.)
- Agreeing the labour to be performed by slaves or beasts (4 pp.)
- Involving others in order to perform the work agreed in the context of the *muzāraʿa* and the *shirka* (6 pp.)
- The partner in the first *muzāraʿa* (crop farmer) agreeing an additional *muzāraʿa* (4 pp.)
- The transfer of land from the crop farmer onto the landowner or the slave for the purpose of a *muzāraʿa* (3 pp.)
- Contract clauses rendering the *muzāraʿa* void (4 pp.)
- The *muzāraʿa* which also agrees agricultural cooperation (*muʿāmala*) elsewhere (2 pp.)
- Ambiguities in contracts concerning a *muzāraʿa*³⁸ (4 pp.)
- Disputes concerning individual clauses of the contract (10 pp.)
- The title (*ʿushr*) with respect to the *muzāraʿa* and other agricultural cooperation (*muʿāmala*) 95 pp.)
- Other agricultural cooperation (*muʿāmala*)³⁹ (4 pp.)
- Further chapter on the *muʿāmala* (3 pp.)
- Both co-owners or one of them using agricultural lands (9 pp.)
- The cooperation between the manager of the *muʿāmala* and another person (4 pp.)
- The *muzāraʿa* with an apostate (*murtadd*) (3 pp.)
- The *muzāraʿa* with the inhabitant of territory not under Islamic rule (*ḥarbī*) (3 pp.)
- The *muzāraʿa* with a minor and with a slave (4 pp.)
- The guarantee in the context of *muzāraʿa* and *muʿāmala* (2 pp.)
- The *muzāraʿa* and *muʿāmala* with the (fatally) ill person (10 pp.)
- Representation with respect to the *muzāraʿa* (7 pp.)
- Increase or decrease (of the share) in the *muzāraʿa* and the *muʿāmala* (1 p.)
- Marriage, compromise settlement concerning injuries, contractual divorce law, manumission and redemption contracts in the context of the *muzāraʿa* and *muʿāmala* (3 pp.)
- The work undertaken by the landowner, or the owner of the palms, in agreement with the person entrusted with carrying out the work, and without such an agreement (4 pp.)

38 This refers to the *essentialia negotii* that must be agreed for the contract to achieve legal validity.

39 The *muʿāmala* is always discussed using the example of the care and use of palm trees.

- Transferring (only) part of the (necessary) work to the person carrying out the work (6 pp.)
- Ignorance of the work the deceased worker carried out, and disputes over seeds and terms of the contract (3 pp.)
- muzāraʿa* and *muʿāmala* with respect to pledged goods (between pledger and pledgee) (2 pp.)
- Void terms of the contract, which result in the *muzāraʿa* becoming void, or remaining effective (1 p.)
- Book: Water rights (*al-shirb*) (42 pp.)
- Witness evidence in the context of water rights (9 pp.)
- The contractually agreed right to withdraw with respect to a contract on water rights (9 pp.)
- Book: Inebriating drinks (*al-ashriba*) (37 pp.)
- The *taʿzīr*⁴⁰ (3 pp.)
- 419 Book: Compulsion (*al-ikrāh*) (146 pp.)
- Things which Muslims⁴¹ are compelled to do by criminals⁴² (15 pp.)
- Being compelled to manumit slaves, to pronounce a divorce, and to enter into marriage (4 pp.)
- Things which (Muslims) are compelled to do to their own selves, or their own property (12 pp.)
- Compulsion to spend or accept property (4 pp.)
- On the compulsion to declare acknowledgement (2 pp.)
- On the compulsion to marriage, to accept *khulʿ*, to manumit slaves, and to compromise concerning blood money in case of intentional damage (3 pp.)
- The compulsion to commit fornication and aggravated highway robbery (*qatʿ*) (4 pp.)
- The compulsion to sell (a slave), where the buyer resells or manumits him (6 pp.)
- The compulsion to actions that will result in manumission, or divorce (5 pp.)
- The compulsion to take an oath or a vow (3 pp.)
- Compulsion at the hands of the Kharijites⁴³ (1 p.)
- Situations in which the person compelled will act against the compulsion (3 pp.)

40 This refers to the punishment for prohibited consumption of alcohol that is not covered by the Quranic provisions (cf. Part 1, 4.7.c above).

41 Mixed chapter containing descriptions of individual instances of compulsion in which it may be permissible to act contrary to the law.

42 *Lusūṣ*, 'robbers'. Non-Muslims are also mentioned as criminals.

43 As in the first chapter this refers to actions prohibited by religious laws.

- The compulsion to free a slave belonging to a third party (6 pp.)
- The compulsion to place something into escrow, and other matters (3 pp.)
- Disguised transactions/declarations not seriously intended (*al-taljija*) (4 pp.)
- Compulsion to conclude a contract (2 pp.)
- Actions the person under compulsion performs spontaneously and against the compulsion (3 pp.)
- Going beyond what one was compelled to do (3 pp.)
- The right to choose in the context of compulsion (8 pp.)
- Compulsion in matters which must be observed with regard to God (3 pp.)
- Compulsion in the context of authorisation (3 pp.)
- What is inescapable under compulsion, and what can be avoided (4 pp.)
- The *l'ān* declared under judicial compulsion due to invalid witness evidence (2 pp.)
- Restriction of legal competence (*al-ḥajr*) (28 pp.)
- Book: The adult slave with limited legal competence (*al-ma'dhūn al-kabīr*) (248 pp.)
- (...)
- Book: Blood money⁴⁴ (135 pp.)
- Witness evidence in the context of blood money (3 pp.)
- The collective oath (*al-qasāma*)⁴⁵ (16 pp.)
- Talion law (*al-qīṣaṣ*) (33 pp.)
- Refraining (*al-'afw*) from (invoking) talion law (11 pp.)
- Refrainment in the context of injury through negligence (*al-khaṭā'*)⁴⁶ (3 pp.)
- Representation in cases of (deliberate) bloodshed (9 pp.)
- Retracting a witness statement concerning homicide (5 pp.)
- Infractions (*jināyāt*)⁴⁷ committed by minors and feeble-minded persons (4 pp.)
- Infractions committed by riders⁴⁸ (5pp.)
- Drovers⁴⁹ (*al-nākhis*) (4 pp.)

44 This refers to payments to the injured party or his family to compensate for injuries sustained.

45 This refers to the oath taken by those paying the blood money, declaring to the family of the killed man that they did not kill him and do not know who his murderers are.

46 This refers to the distribution of the blood money after the death of the injured man.

47 This refers only to injury to the person, not to property; cf. the definition in al-Sarakhsī, *Kitāb al-mabsūṭ*, vol. 27, 84.

48 This refers to issues of liability with or without fault in cases of injury by a riding animal.

49 This refers to the drover's liability, also with respect to accompanying riding animals and riders.

- What happens in public spaces (*tarīq*) (3 pp.)
- The collapsing wall (*al-ḥā'it al-mā'il*) (6 pp.)
- Accidents near wells (9 pp.)
- Accidents near canals (2 pp.)
- Accidents in mosques and markets (3 pp.)
- Infractions (through negligence) committed by a slave (20 pp.)
- 420 Infraction committed by a slave when digging a well⁵⁰ (6 pp.)
- Damages caused by sewers and drains (1 p.)
- Abduction of a slave who subsequently commits an infraction (10 pp.)
- Infraction committed by the *mukātab* (6 pp.)
- Infraction committed by a *mukātab* belonging to two masters (5 pp.)
- Infraction committed by the *mudabbar* (3 pp.)
- Infraction committed by a *mudabbar* belonging to two masters (3 pp.)
- Infraction committed by a *mukātab* through negligence (3 pp.)
- Book: Injuries to the person (*al-jināyāt*) (40 pp.)
- The person liable within a group paying blood money⁵¹ (*al-mu'āqil*) (19 pp.)
- Book: The bequest (*al-waṣāyā*) (158 pp.)
- The bequest with the purpose of financing the *ḥajj*⁵² (4 pp.)
- The bequest for the heir, the outsider (*aghṇabī*) and the murderer (6 pp.)
- The bequest concerning income and service (11 pp.)
- The bequest concerning the yield of agricultural land, orchards and gardens (5 pp.)
- The bequest concerning manumission (10 pp.)
- The manumission of a person (to be purchased by the executor) on behalf of the deceased (5 pp.)
- The executor and the bequest (17 pp.)
- Acknowledgement by the heir⁵³ (7 pp.)
- Acknowledgement by the heir with respect to the manumission of (bequeathed slaves) (2 pp.)
- The bequest concerning manumission in exchange for payment or services⁵⁴ (4 pp.)

50 This refers to the master's continuing liability after the manumission of the slave.

51 This refers to the question of which persons share the liability for infractions committed by a relative, and in what way they are liable.

52 The 'great' pilgrimage to Mecca, which the Quran makes incumbent on all believers who are able to accomplish it.

53 This refers to acknowledging the existence of a bequest.

54 This refers to how the third of the estate that is not burdened by bequests is to be determined.

- The bequest not accepted by the beneficiary (4 pp.)
- The bequest of the amount of a share in the inheritance (11 pp.)
- Taking into account items of property (*'ayn*) and demands (*dayn*) (when distributing the estate among heirs and legatees) (4 pp.)
- Lawsuits among heirs (5 pp.)
- The acknowledgement of a dying man, and his actions⁵⁵ (3 pp.)
- Witness evidence in the context of the bequest and other matters (4 pp.)
- The bequest with respect to the unborn child (of a slave-woman) (2 pp.)
- The exception (*al-istithnā'*)⁵⁶ (4 pp.)
- The bequest concerning a part (*juz'*) and portion (*sahm*) (3 pp.)
- The bequest on condition (3 pp.)
- The bequest of a minor and an heir (5 pp.)
- The bequest concerning a sixth of the plot of land surrounding the home⁵⁷ (2 pp.)
- The bequest exceeding a portion of the inheritance (13 pp.)
- Book: (Physical) items (*'ayn*) and demands (*dayn*) (123 pp.)
- The bequest exceeding the (free) third (7 pp.)
- The bequest concerning manumission in case one heir receives more property than the other (6 pp.)
- The bequest concerning manumission and making a concession (*al-muḥābāt*)⁵⁸ (3 pp.)
- The bequest concerning manumission in case of existing claims against an outsider (*ajnabī*) (9 pp.)
- The bequest of physical items of property (*'ayn*) in case of existing claims against heirs (31 pp.)
- Manumission during the master's (fatal) illness and its effect (12 pp.)
- The heir's acknowledgement that another heir exists, in case the latter confirms or denies this (28 pp.)
- The bequest to an heir to an amount that exceeds the (free) third with the agreement of other heirs (12 pp.)
- The bequest concerning certain items of property the value of which will increase or decrease after the testator's death (5 pp.)
- If the testator dies without (legal) heirs, and if he (before his death) acknowl-

55 This refers to the legal effectiveness of transactions and actions benefiting specific creditors/beneficiary.

56 This refers to how to denote the legacy by means of a collective term with an exception.

57 This refers to the scope of the principle of certainty in the context of bequests.

58 This refers to how the promise of manumission is treated under inheritance law. Also how the exchange agreement, partially free of charge, with a fatally ill testator is treated.

- edges a living heir or legatee (5 pp.)
 Book: The manumission (by a master) suffering from a fatal illness⁵⁹ (68 ff.)
 (...)
 Book: Deciding (*al-dawr*) (between paying blood money and handing over the guilty slave)⁶⁰ (45 pp.)
 Forgiveness and bequest⁶¹ (28 pp.)
 Book: Inheritance quotas (*al-farā'id*) (167 pp.)
 Offspring (11 pp.)
 Doubts arising concerning the offspring's right to inherit (2 pp.)
 Brothers and sisters (10 pp.)
 Lowering the inheritance quotas in case of shortage (*al-'awl*) (6 pp.)
 The grandmothers (10 pp.)
 The beneficiaries (*aṣḥāb al-mawārith*)⁶² (6 pp.)
 The grandfather's inheritance quota (14 pp.)
 Distributing the remainder (*al-radd*)⁶³ (7 pp.)
 The child from a marriage dissolved by *li'ān* (*walad al-mulā'ana*)⁶⁴ (3 pp.)
 Principles of distributing an inheritance (13 pp.)
 Half-siblings' on the mother's side title to inherit (*dhawī arḥām*) (12 pp.)
 The siblings of *dhawī arḥām*'s title to inherit (5 pp.)
 Concerning those related on both sides among brothers' daughters and sisters' children (1 p.)
 The title to inherit of paternal grandmothers (*'ammāt*) and maternal grandfathers and grandmothers (*akhwāl wa-khālāt*) (2 pp.)
 The title to inherit of paternal grandmothers' and maternal grandfathers' and grandmothers' offspring (3 pp.)
 Those who are not grandparents according to the law (*al-fāsīd min al-ajdād wa-l-jaddat*) (4 pp.)

59 This refers to the question of, for instance, how an existing debt can be offset against the bequeathed manumission, if the debt is lower or higher than the value of the slave.

60 This refers to the fact that if the injured party declined the blood money, this must be taken into account under inheritance law.

61 This refers to the relation between declining the blood money from the culpable slave and other bequests.

62 This refer to the status and relation of those entitled to fixed inheritance quotas (*aṣḥāb al-farā'id*) and the remaining relatives entitled to inherit (*'aṣaba*).

63 This refers to the distribution of the residuary estate once the quota heirs are satisfied and there are no residuary heirs.

64 This refers to the kinship relation between a child born of adultery and the father.

- Those who died together (*al-ḥaraqī wa-l-gharaqī*)⁶⁵ (3 pp.)
 Unbelievers' title to inherit (4 pp.)
 Sub-chapter: Zoroastrians' title to inherit (*al-mājūs*) (5 pp.)
 The patron–client relationship (*al-walā'*)⁶⁶ (5 pp.)
 Sub-chapter: Patron–client relationships among free persons (4 pp.)
 The title to inherit of those who have killed deliberately or through negligence (5 pp.)
 The title to inherit of the unborn child (*al-ḥaml*) (5 pp.)
 Sub-chapter: The title to inherit of a missing person (*al-mafqūd*) (1p.)
 Representation (*al-munāsakha*)⁶⁷ (5 pp.)
 One-sided divorce (*ṭalāq*) declared by a fatally ill man (2 pp.)
 Other doubts arising outside of the clientage of Zoroastrians (5 pp.)
 Legal issues concerning the daughters of sons, and sisters (2 pp.)
 Doubts arising concerning descent (1 p.)
 Concerning that which is impossible (1 p.)
 The acknowledgment in the context of descent (3 pp.)
 The gradual acknowledgment of several persons' title to inherit (17 pp.)
 The acknowledgment after the estate has been distributed (4 pp.)
 Book: The inheritance quotas of a hermaphrodite (*al-khunthā*) (12 pp.)
 Book: The hermaphrodite (12 pp.)
 Book: Calculating bequests (15 pp.)
 Book: The different opinions of Abū Ḥanīfa and Ibn Abī Laylā, may God have mercy on them both (40 pp.)
 Book: The terms (of a contract) (*al-shurūt*)
 Book: The legal stratagems (*al-ḥiyal*)⁶⁸ (7 pp.)
 Rent (5 pp.)
 Representation (3 pp.)
 The compromise settlement (9 pp.)
 Vows/oaths (7 pp.)
 Sale and purchase transactions (5 pp.)
 Affirmation by oath (*al-istiḥlāf*) (4 pp.)

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- 65 This refers to the question of succession among those who are entitled to inherit from one another who have met their death together ('burned' or 'drowned' persons); the solution is found in a presumption of simultaneous death.
- 66 This refers to the title to inherit among persons in a patron–client relationship due to manumission of slaves, or affiliation of free men.
- 67 This refers to how graduated succession is dealt with.
- 68 This refers to taking external circumstances into account in which it is advisable to avoid formal requirements.

Book: Gainful employment (*al-kasb*)⁶⁹ (43 pp.)

Book: Milk kinship (foster kinship) (*al-riḍā'*)⁷⁰ (4 pp.)

Explanation of the prohibition of marriage due to descent (kinship) (3 pp.)

Explanation of the man's milk (*labān al-faḥl*)⁷¹ (11 pp.)

A marriage afflicted with doubt (*nikāh al-shubha*) (8 pp.)

69 This refers to the need for it, and the significance earnings have in religious law.

70 This refers to the legal consequences of being breastfed by the same nurse.

71 This refers to the prohibition of marriage between children of two wives of the same man, who each breastfed her own child.