The Formation of the *Mudawwana*

by

Wesley Arnold Thiessen
B.A., Bethel University, 1986
M.A., Institute of Holy Land Studies, 1989

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in the Department of History

Supervisory Committee

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Abstract

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The *Mudawwana* is a work which is traditionally credited to Saḥnūn, a legal jurist from Kairouan, North Africa in the 2nd-3rd/8th-9th century. It is one of the major legal texts at the foundation of the Mālikī *madhhab* named after Mālik b. Anas. The text is a large compendium of hypothetical scenarios requiring resolution. The style of the text is *masāʾil*, i.e. question-and-answer, between a disciple and his teacher. This research examines ancient manuscripts, commentaries and modern editions of the *Mudawwana* for a comparative analysis in attempting to understand the way in which the text was formed. The text will be examined in the areas of structure, content and presentation. The roles and influences of those responsible for the development of the text will be examined using definitions set out by Sebastian Günther. Discrepancies and variances amongst the manuscripts and modern editions, along with insights gleaned from the commentaries will yield a formative process in the development of the text over a period of centuries. It will be shown that although much of the content of the text was likely set by the creator of the text, various influences through the centuries by personalities and individuals fulfilling certain roles have impacted the structure and presentation of the text. The various roles in the creation of the text will be examined including author, writer, scribe, student, transmitter and editor. The influences of these various roles have developed the text further, therefore distancing it from the intentions of the creator of the original text. Structural changes were most prominent in the medieval period with *kitāb*s within the text being bound in *kurrāsa*s, one or more to a group. In the modern period, these nearly one hundred *kitāb*s were

then bound in multi-volume hardcover sets providing a very new presentation form for the text. Additionally, a new name was given with the publication of the first modern edition in 1323/1905, *al-Mudawwana al-kubrā*. The textual changes will be examined in light of these roles in order to better understand how the text has been modified and formed over the centuries. Results will demonstrate that the text of the *Mudawwana* has undergone three primary periods of development: formative, classical and renaissance. The roles and personalities have impacted its development in content, structure and presentation, with the latter two having been more significantly affected during its classical and renaissance stages.

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حَدَّثَنَا حَفْصُ بْنُ عُمَرَ، عَنْ شُعْبَةَ، عَنْ أَبِي عَوْنٍ، عَنِ الْحَارِثِ بْنِ عَمْرو بْنِ أَخِي الْمُغِيرَةِ بْنِ شُعْبَةَ،

عَنْ أُنَاسٍ، مِنْ أَهْلِ حِمْصَ مِنْ أَصْحَابِ مُعَاذِ بْنِ جَبَلٍ أَنَّ رَسُولَ اللَّهِ صلى الله عليه وسلم لَمَّا أَرَادَ أَنْ

يَبْعَثَ مُعَاذًا إِلَى الْيَمَنِ قَالَ كَيْفَ تَقْضِي إِذَا عَرَضَ لَكَ قَضَاءٌ . قَالَ أَقْضِي بِكِتَابِ اللَّهِ . قَالَ فَإِنْ لَمْ

تَجِدْ فِي كِتَابِ اللَّهِ. قَالَ فَبِسُنَّةِ رَسُولِ اللَّهِ صلى الله عليه وسلم. قَالَ فَإِنْ لَمْ تَجِدْ فِي سُنَّةِ رَسُولِ اللَّهِ

صلى الله عليه وسلم وَلاَ فِي كِتَابِ اللَّهِ. قَالَ أَجْتَهِدُ رَأْيِي وَلاَ آلُو. فَضَرَبَ رَسُولُ اللَّهِ صلى الله عليه

وسلم صَدْرَهُ وَقَالَ الْحَمْدُ لِلَّهِ الَّذِي وَفَّقَ رَسُولَ رَسُولِ اللَّهِ لِمَا يُرْضِي رَسُولَ اللَّهِ

سنن أبي داود

كتاب الأقضياء

باب فِي طَلَبِ الْقَضَاءِ

</div>

Ḥafṣ b. ʿUmar told us according to Shuʿba according to Abū ʿAwn according to al-Ḥārith according to ʿAmr b. Akhī al-Mughīra b. Shuʿba according to Unās [who heard it] from the people of Ḥimṣ from the companions of Muʿādh b. Jabal when the messenger of Allāh (peace be upon him) wanted to send Muʿādh to the Yemen said, "How will you judge when you are presented with a case to judge?" He said, "I will judge with the book of Allāh." He said, "And if you do not find it in the book of Allāh?" He said, "[I will look] in the *sunna* of the messenger of Allāh (peace be upon him)." He said, "And if you do not find in the *sunna* of the messenger of Allāh (peace be upon him) and not in the book of Allāh?" He said, "I will form an independent judgment by using my mind with reason and comparison to form my opinion not sparing any effort." The messenger of Allāh struck him on the chest and said, "Praise to Allāh who has given success to the messenger of the messenger of Allāh in what pleases the messenger of Allāh."

> *Sunan* Abū Dāwud
> "Book of Judgments"
> Chapter concerning "Requests for Judgments"

وعنه [كتاب سحنون] انتشر علم مالك بالمغرب

ـ ابن خلّكان، وفيات الأعيان

And with it [the book of Saḥnūn] the teachings of Mālik were spread throughout the Maghrib.

- Ibn Khallikān, *Wafayāt al-aʿyān*

Preface

My sojourn in Tunisia began in 1997, following a brief stint as an English instructor in Libya. At the time, I had no idea that my search for temporary employment would turn into a twelve-year career in the city of Kairouan. At times unbearably hot in summer, a family decision was made to construct a rectangular basin within our walled home to serve as a swimming pool for our survival of the temperatures that regularly spiked above 40°C. My wife takes pleasure in occasionally reminding me that she, along with our children, endured one of the hottest days in Kairouan in our recollection while I just happened to be out of the country—a mere 57°C. So we considered the pool a necessity, rather than a luxury. A climbing vine on a metal frame near the street end of the pool created a screen of sorts. That, along with the large iron gate fused with perforated metal panelling, provided our privacy from the street. The following year, our neighbours to the north began extensive renovations on their home, including a studio apartment above their garage which directly abutted the wall separating our two properties. As is common modern building practice, each property owner has his own wall surrounding his property, built right against that of the neighbour, so there were twin walls dividing our living spaces. The neighbour's studio apartment required a place to hang wet laundry, and so a terrace was built for that purpose. This terrace provided observer status from above to those enjoying the more moderate temperatures of an unheated swimming pool in summer. This awkward situation was my introduction to Islamic building practice, both modern and ancient custom, as well as law.

My local building project manager, Muḥammad, who oversaw the completion of several small building modifications at my home over those years, provided excellent commentary on the appropriateness of both my neighbour's, as well as my own, modifications, according to current custom. He, being unaware of the historical development of Islamic building law in the Mālikī school, was certainly aware of what was appropriate concerning current building practice in the city. He informed me at the time that the action of

my neighbour in building a terrace above the level of our pool, and having a wall beside the terrace providing a direct sight line with the bathers in the pool was in contravention of local custom. He further declared that as my pool was built before the neighbour's terrace, it was my neighbour's responsibility to increase the height of his portion of our twin wall, maintaining the privacy which I previously had for my pool. My neighbour and I only spoke once or twice concerning the privacy issue and his terrace, specifically to convey my disapproval of the viewing by his sons of our free time in the pool. Following that conversation, I don't recall another incident ever contravening our privacy from that vantage point. Yet on his terrace, the wall remained at waist height.

This was not the end of personal experiences with my neighbours concerning appropriate Islamic building practice. Some years later, I made the decision to close in a small, virtually unused balcony on the back side of our home in order to increase storage space. When planning the design of the structure, we chose to include a window space on the larger wall, with a side vent window on one of the narrow ends of the balcony walls. It wasn't long after we had the initial structure completed that a knock came at our gate. The neighbour to the rear of our property came to share his anger over our decision to include a window which would now overlook his—a currently unoccupied, building-in-progress—property. This "invasion" of his privacy, was completely unacceptable to him. His complaint was tempered by his assertion that he was not concerned about us, as foreigners, as the current occupiers of the home, insisting that we had pure inner motivations, but rather he was concerned about who may, in future, occupy the home and choose to observe his home from the window. I assured him that we had calculated this possible invasion of privacy, and wanting to allow light into the room of our home off of which the balcony was located, we had decided we would use opaque glass blocks to fill the window space, rather than a traditional window. When the project was completed, his objections appeared to be assuaged, as we heard nothing further from him.

Ironically, some years later during an absence from the country, and without my approval, a window was transferred in my home from an interior location to an exterior one—directly overlooking our own pool, and facing towards the property of the owner of the studio apartment and the terrace. Being on the second level of the house, it provided an excellent viewpoint of the surrounding area. Now, from within that bedroom, it was possible to see into the more recently installed pool in the neighbour's yard (you must keep up with the Joneses, you know). Upon our return to the house, it was made quite clear to us that the neighbour was not at all pleased with this situation, as it allowed someone to discreetly observe *that* family now lounging in *their* pool. Note that neither pool is adequately large to justify the use of the verb "swim". Another irony in the scenario was that the wall by their terrace was still the same height. Some months later, with no further intervention on my part, the neighbour's wall between our properties was increased in height, blocking any view that anyone on their terrace might have had of our pool, and additionally blocked any view from our window to their pool. Obviously, the placement of a window in such a "strategic" location moved the owner to rectify the situation once and for all. Thus privacy was restored to our pool, and the right of privacy returned to the one who had occupied the sight line fist. No harm done.

This introduction to the concepts of building law within an Islamic society piqued my interest in the origins of Islamic law, and specifically those dealing with building and privacy. I discovered that in the twenty-first century, laws in place concerning modern building practices were founded on those established many years earlier through the reasoning of jurists in North Africa, one hailing from Kairouan. This study is a deeper look into the formation of one of the legal texts at the foundation of the Mālikī *madhhab*. It was the creation of texts like the *Mudawwana* which applied Islamic law to the aspects of life of the people of North Africa and beyond, helping them understand the way in which life should be conducted while following the teachings of Mālik and the Mālikī tradition.

Acknowledgements

Any undertaking of this nature is never accomplished alone. Nor is it celebrated alone. Like a marathon, the completion of just over four years of often intensive study has brought me to a place of achievement with a desire to recognize those who have been helping alongside, providing practical, emotional, material and intellectual assistance during this project.

I would not have embarked on this venture had it not been for the likes of historians such as Paul Spickard and Patrick Miller, first planting the seed in my head. Further inspiration came with the visit of Charles Nienkirchen who encouraged me to think carefully about the institution and historian with whom I would affiliate myself. Added to these were courses taken previously with Joseph Cumming and thus I began my search for an appropriate mentor and institution to begin my foray.

The cheering section is vital for a long-distance venture, to provide encouragement to continue on. At the front of the pack have been my family—my wife, Elaine, and my four children, Hannes, Amaliyah, Aedyn and Geneiagh. They have released me from innumerable obligations and responsibilities over the last four years, allowing me to pursue this goal. Their belief in me, ever present, has been a mainstay. Thank you! My parents along with numerous relatives and friends have encouraged me over the years, expressing statements of support and good wishes. I know many prayers have been made on my behalf.

Academically, I am most indebted to my supervisor, Dr. Andrew Rippin. From the first exchanges of email with my inquiries concerning this scholarly relationship, until the final revisions of this dissertation, I have found him to be most available, full of insight and excellent guidance. Opportunities for exchange with Dr. Martin Bunton and Dr. Marcus Milwright have only enhanced my experiences at the University of Victoria. I could not have

guessed that such a beautiful location would provide me with such excellent academic mentorship.

I have met new colleagues and begun new relationships with previous colleagues in Tunisia. Hospitality is valued in Tunisia, and amongst my academic cohorts, I found nothing but the most helpful. Here I must mention the assistance of Dr. Ahmed Bahi, Dr. Lotfi Abdeljaouad and Dr. Nejemeddine Hentati. Their valuable aid has been to my great benefit.

You simply cannot find all the resources yourself; it takes a team of helpers to gather what you need. In this respect, I would like to recognize the support of the staff of two excellent university libraries, at the University of Victoria and at the University of Calgary. I would be remiss though, if I did not specifically mention the names of two excellent ILL librarians, skilled in coaxing the most difficult resources out of the bowels of North American depositories: Kathleen James and Judy Zhao. Mention should also be made of Dr. Elaine Wright of the Chester Beatty Library, along with the kind permission to include images of the library's manuscripts. I'm also grateful to Anna Esty of Harvard University Library for access to special resources there.

Some library work is done by those who are not librarians. I have had a rich crew of research assistants including Keith Yoder, the best scanner in the UAE, and my cousin (soon-to-be Dr.) John Dirks, my right-hand at the U of T library! You guys are great.

No list of acknowledgements would be complete without recognizing the incredibly organized and resourceful Heather Waterlander. Every university graduate department needs someone just like her! Answers are all at her fingertips. Thanks Heather!

The road would not have been travelled (it certainly is the road LESS travelled) had it not been for the generous financial support of the University of Victoria History department. Two Graduate Directors have assisted in this regard, Dr. Perry Biddiscombe and Dr. John Lutz. Thank you for believing in what I do to the extent that the department would assist with

funding. In the area of funding, although mostly indirect, I would be remiss not to mention again my parents. Their financial and diverse help consisting of, but not limited to, airport transfers, hot lunches, gourmet dinners and yard work. Thank you Dad and Mom!

My time in Victoria would never have been affordable had it not been for the generous housing provided by my aunt, Betty Dirks. The door was always open. Conversations each visit always included her seeming deep interest in all my coursework. She provided stimulating questions that helped me think through my studies.

Rudolf and Marguerite Dyke, my aunt and uncle, also provided an open door and warm hospitality in Victoria. Uncle Rudolf provided mock comprehensive exams to prepare me for the real thing. He even seemed genuinely interested! I'm grateful.

Thank you to my extended family and friends who have had a word of encouragement and to my many Tunisian friends who have helped along the way. I would like to specifically acknowledge Sahbi, Muhammad, Lamia, Nadia, Samir, Aymen and Lassaad. You have each made my life richer.

I would also like to thank God for the health, strength and mind to carry this out.

Introduction

The formation of a book in modern times is a lengthy and sometimes complicated process, with many individuals being involved in the task. These responsibilities include, but are not limited to, copy-editing, typesetting, proof-reading, artwork design, printing and binding. Many books, from the date the writing is completed, take up to a year to be published.

The publication of modern editions of ancient Arabic texts is further complicated by additional factors. The subject matter may be unclear caused by the uncertainty which sometimes characterizes the sources as a result of variant readings existing between manuscripts. Some ancient manuscripts were not bound together, creating potential disorder in the sequence of the text itself. The source of the text itself may be unknown or unverified resulting in misunderstanding the value a text may have had both at the time that it was written as well as later.

With the passage of time, many ancient manuscripts are being published as modern editions, with a new face on them. Preparing this new look often requires decisions affecting the physical make-up of the text; divisions are created where there were none, bringing things together that were formerly apart. More than that, these changes can affect the textual content of a book. In some instances ambiguity needs to be eliminated, forcing editors to make difficult decisions attempting in most instances to discern the author's original intent: a challenging process.

It would be naïve to believe that modern editors have no influencing developmental role in the formation of modern editions of ancient Arabic texts. The nature and depth of the influence a modern editor has in production can only be understood if one views the work comparatively, both the pre-published product, in this case the manuscripts, and the final editions. Yet modern editors can in some cases be taciturn in divulging the nature of their sources. Comparative analysis between modern editions and ancient manuscripts is one way

of being able to better discover the nature of the influence of modern editors on the texts. This research is exactly that—a comparative analysis of modern editions and ancient manuscripts in order to better determine not only the influence of the modern editor on the final published form, but also the influence of the author, writer, or creator of a text, the transmitters and even commentators. The specific text being investigated is the *Mudawwana*, known from the beginning of the twentieth century as *al-Mudawwana al-kubrā*, a legal text of the Mālikī *madhhab* from North Africa which dates to the 3rd/9th century.

The text will be examined comparatively, and at various stages in its formation. Ancient manuscripts of the *Mudawwana* will be compared with each other, and these manuscripts will also be compared with the modern editions of the *Mudawwana*. Five modern editions have been examined for this research, spanning 100 years from 1905-2005. The modern editions will themselves be compared to each other as well. Finally one short passage from the *Mudawwana* will be translated and analyzed in order to better understand from the text itself the way in which it was formed.

Comparisons between the manuscripts and the modern editions will yield discrepancies between them, these discrepancies and differences will be classified into three categories—structure, content and presentation. Some of the differences will demonstrate the effect of the process of copying manuscripts, and also decisions that must be made by modern editors in publishing a modern edition. Discrepancies will be uncovered from amongst the modern editions, providing evidence that there is more than one manuscript tradition which underlies the various modern editions of the text.

Following the presentation of one small portion of the text, an analysis will be made of the text in order to identify the roles played by various historical personalities who have been involved in its formation. These personalities will include the three most significant figures named in the text, Mālik, Ibn al-Qāsim and Saḥnūn. Definitions used for these roles

will be those already found within the discipline of Islamic studies, drawing on the experience of modern scholarship. Each role influences the text. Structure and presentation of the text will give cues as to the influence those responsible have had on it. Each cue must be examined within its own context in order to arrive as nearly as possible at an accurate perspective of what the text was, how it was influenced and by whom.

What will be seen is that the *Mudawwana* had at least three significant periods concerning its formation: formative, classical and renaissance. The text demonstrates development in three phases that can be clearly evidenced through the interpretation of the witnesses extant. An initial stage gave birth to the idea of the *Mudawwana*, primarily through the agency of Saḥnūn, from years of study under Ibn al-Qāsim. The influence of the teachings of Mālik will be evident, but he himself is essentially a textual source rather than an active participant. A later stage brought more rigid structure and form to the text, taking on the shape of a book in initial stages. Another historical figure, al-Qābisī, had an active role in strengthening the contemporary place of the *Mudawwana* through his role as teacher as well as an editor of the text. Then the modern period brought about a new text of the *Mudawwana*, new in form more than content, although the content was influenced to some degree.

Saḥnūn, a *qāḍī* (jurist) from third/ninth century Ifrīqiya (North Africa), is seen by many to be primarily responsible for the authorship of the *Mudawwana*. Yet with the instruction and input of his teachers, Ibn al-Qāsim and indirectly Mālik, it can become difficult to determine who should rightly take credit for a particular role. Clearly defined roles will help to accurately assess the involvement of each individual. With this methodology, it will be less taxing to determine the influence that each role had in the formation of the text.

Roles examined in this research will include writer, author and editor. Other roles which will also be examined, such as source, guarantor and authority, may be altered with

modifiers such as direct, indirect, main, original, earliest and older, to name a few. Terminology and their definitions for these roles will be based on that provided by Sebastian Günther, publishing almost ten years ago, in order to reduce confusion amongst scholars of Islamic history.

Fragments of ancient manuscripts of the *Mudawwana* have been consulted, primarily from two collections, the Chester Beatty Library (CBL) in Dublin, Ireland and the British Library (BL) in London, United Kingdom. Five modern editions of the *Mudawwana* have also been investigated, two of them extensively. Their forms will be given once in full, following which a shortened designation will be used to identify them. As modern journal material is infrequent, it is not necessary to provide a list of scholarly journal abbreviations. All dates will be referred to first in the Hijri form followed by the Gregorian equivalent through the entire study. Geographic locations will be referred to by commonly used English spelling if they exist. The content of the *Mudawwana* is made up of almost 100 individual chapters, or *kitāb*s. These *kitāb*s will be referred to by their Arabic titles transliterated into Latin characters. The word *kitāb*, preceding each one, will be capitalized along with the first word of the title of the *kitāb* following the form of Miklos Muranyi in his various studies of Mālikī works in North Africa. Although the use of the male gender is used exclusively to refer to authors or publishers, this is merely for ease of composition and should in no way be considered a reflection of attitude or persuasion in any form.

Although this research has been completed with the assistance of many, any errors found within it are completely my own.

Chapter 1
The Problem of the *Mudawwana*

1.1. General Description of the *Mudawwana*

Al-Mudawwana al-kubrā is the full title of the text attributed to Imām Saḥnūn, the

short form of Abū Saʿīd Saḥnūn ʿAbd al-Salām b. Saʿīd b. Ḥabīb b. Ḥassān b. Hilāl b. Bakkār

b. Rabīʿa al-Tanūkhī (d. 240/854).**[1]** The text is specified as the *riwāya* of Saḥnūn, according

to Ibn al-Qāsim, Abū ʾl-ʿArab ʿAbd al-Raḥmān b. al-Qāsim, b. Khālid al-ʿUtaqī (d. 191/806),

from Mālik b. Anas, Abū ʿAbd Allāh Mālik b. Anas b. Mālik b. Abī ʿĀmir b. ʿAmr b. al-

Ḥārith b. Ghaymān b. Khuthayn b. ʿAmr b. al-Ḥārith al-Aṣbaḥī.[2] This clarification avoids any

confusion with texts containing the word *Mudawwana* in its title.[3] The *Mudawwana*[4] is a

lengthy treatise which deals extensively with numerous areas of life concerning the

permissibility of actions from a religiously legal perspective. It lays a foundation of what is

understood to be acceptable behaviour within the Mālikī *madhhab* not only for everyday

situations, but also almost any imaginable situation through the course of life, including

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1.   This is the form of his name, exactly as it appears in al-Mālkī's *Riyāḍ al-Nufūs*, see Abū Bakr ʿAbd Allāh b. Muḥammad al-Mālikī, *Riyāḍ al-nufūs fī ṭabaqāt ʿulamāʾ al-Qayrawān wa Ifrīqiya* (Beirut: Dār al-Gharb al-Islāmī, 1981), 1:345. Although his proper first name is sometimes recognized as ʿAbd al-Salām, his more well known nickname of Saḥnūn is clearly preferred. Al-Mālikī notes that the name Saḥnūn is considered correct, i.e. not a nickname, amongst the ʿulamāʾ of Ifrīqiya. Two theories have been put forward concerning the meaning and giving of his nickname: one is that he was named for a bird, the other is for his shrewdness. Talbi suggests that the form of his name is a diminutive, in the form of *faʿlūn*, expressing affection, such as that in Khaldūn, see M. Talbi, "Saḥnūn, Abū Saʿīd ʿAbd al-Salām b. Saʿīd b. Ḥabīb b. Ḥassān b. Hilāl b. Bakkār b. Rabīʿa al-Tanūkhī," *Encyclopaedia of Islam, Second Edition* (Brill Online, 2010). Abū ʾl-ʿArab, the oldest primary source of *Tabaqāt* literature of Ifrīqiya, quoted by al-Mālikī, lists him as Saḥnūn b. Saʿīd b. Ḥabīb al-Tanūkhī, see Abū ʾl-ʿArab Muḥammad b. Aḥmad b. Tamīm al-Tamīmī and Muḥammad b. al-Ḥārith b. Asad al-Khushanī, *Ṭabaqāt ʿulamāʾ Ifrīqiya* (Beirut: Dār al-Kitāb al-Lubnānī, n.d.), 101.

2.   Mālik b. Anas is best known as the person after whom the Mālikī *madhhab* was named and to whom are accorded the traditions and foundational teachings of Islamic jurisprudence of that *madhhab*.

3.   See page 93 and footote 239 for other *Mudawwana*s. Having a better context for what the *Mudawwana* is will provide a better understanding for the information conveyed there.

4.   Its modern day title, *Al-Mudawwana al-kubrā*, will be further explained on page 94 in the section on "Observations from the Sources," but specifically dealing with modern editors and their influence on the text. The text of *al-Mudawwana al-kubrā* will be referred to simply as the *Mudawwana* throughout the course of this work.

religious obligations, in order to guide those who are affiliated with the teachings of Mālīk b. Anas.

The text is divided into chapters or *kitāb*s (lit. book, pl. = *kutub*)[5], varying in length from one to sixty-six pages.[6] Depending on the particular modern edition read,[7] there are 93 or 94 *kitāb*s within the text for a total of 2,437 or 2,849 pages of text. Areas dealt with in the text include personal religious duty, personal affairs such as marriage, birth and death ritual, personal economics, for example property and inheritance divisions, lending, and sales with an option, as well as calamities, judgments and testimonies, among many, many others.[8] The format of the text is that of questions and answers, a genre of Arabic literature technically known as *masāʾil*,[9] where questions are posed from a knowledge-seeking disciple, to a more learned teacher who has an extensive knowledge base and the background knowledge of an

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5.   The divisions referred to here are understood to be original to the first developments of this text, intended by those who were responsible for the authoring and earliest transmissions of the text. The divisions found within the modern editions of the text will be dealt with more fully in section 5.1.1, entitled *Kurrāsa*s and *Kitāb*s—Their Order in the Text, starting on page 92.

6.   These numbers of pages are based on the modern edition of the text, to give a rough idea of the immense size of the text.

7.   Throughout this project, two specific modern editions of the text of *al-Mudawwana al-kubrā* will be referenced extensively, the 1323/1905 Cairo edition, more specifically cited as Abū Saʿīd ʿAbd al-Salām b. Saʿīd b. Ḥabīb b. Ḥassān b. Hilāl b. Bakkār b. Rabīʿa al-Tanūkhī Saḥnūn, *al-Mudawwana al-kubrā lil-Imām Mālik, allatī rawāhā al-Imām Saḥnūn b. Saʿīd al-Tanūkhī ʿan al-Imām ʿAbd al-Raḥmān b. al-Qāsim al-ʿUtaqī ʿan Imām dār al-Hijra wa-awḥad al-aʾimma al-aʿlām Abū ʿAbd Allāh al-Imām Mālik b. Anas al-Aṣbaḥī* (reprint in Beirut with original publication in Cairo: Dār Ṣādir offset reprint from the original publisher Maṭbaʿat al-Saʿāda, 1323/1905) and identified simply as the 1323/1905 Cairo edition in the text as well as in the footnotes, and a Beirut edition, more specifically Abū Saʿīd ʿAbd al-Salām b. Saʿīd b. Ḥabīb b. Ḥassān b. Hilāl b. Bakkār b. Rabīʿa al-Tanūkhī Saḥnūn, *al-Mudawwana al-kubrā lil-Imām Mālik, allatī rawāhā al-Imām Saḥnūn b. Saʿīd al-Tanūkhī ʿan al-Imām ʿAbd al-Raḥmān b. al-Qāsim* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1994), identified throughout this paper as the Beirut edition and as the *Mudawwana* Beirut in the footnotes. In addition, two other editions have been consulted and are considred as well, simply not in as much depth. These are the Mecca edition, specifically Imām Mālik b. Anas al-Aṣbaḥī, *al-Mudawwana al-kubrā lil-Imām Mālik b. Anas al-Aṣbaḥī riwāyat al-Imām Saḥnūn b. Saʿīd al-Tanūkhī ʿan al-Imām ʿAbd al-Raḥmān b. Qāsim* (Mecca: al-Maktaba al-ʿAṣriyya, 1999) and the Abu Dhabi edition, specifically Saḥnūn b. Saʿīd al-Tanūkhī, *al-Mudawwana al-kubrā: wa-hiya al-Mudawwana waʾl-Mukhtaliṭa fī furūʿ al-Mālikiyya* (Abu Dhabi: Muʾassasat al-Nadāʾ, 2005).

8.   A full list of all the *kitāb*s of the *Mudawwana* can be found in Appendix A. Both the transliterated Arabic names as well as their names translated into English are found in the general order in which they occur in the modern editions.

9.   More on *masāʾil* will be discussed at the beginning of chapter six entitled Textual Investigation in the *Mudawwana* which begins on page 183.

even larger group of teachers. Frequently the questions are asked inquiring whether a particular action or scenario is permissible or not or whether the teacher has an opinion on a particular issue. Within each *kitāb* the scenarios devised are such that one concludes these are hypothetical situations which are posed in order to inquire concerning what would be an acceptable solution. The value of these hypothetical situations should not be underestimated, as they fulfil several roles, whether pedagogical, intellectual or even an exploration of the possibilities of Allāh's law. Often times questions asked and opinions given are based on the teachings, and specifically the words (*qawl*) of Mālik, however other names, such as Ashhab, ʿAbd al-Wahhāb and Ibn al-Mājishūn, among others, are mentioned throughout the text as providing opinions which appear to be equally valid.

In his biographical section on Ibn al-Qāsim, the Arabic biographer Ibn Khallikān (d. 681/1282) gives a brief description of the *Mudawwana*, citing Ibn al-Qāsim as the author (*ṣāḥib*) of the *Mudawwana*. He describes the text as one of the most highly regarded texts within the Mālikī *madhhab*, and that Saḥnūn received it from Ibn al-Qāsim. The late date of Ibn Khallikān's biographical information does not lend it credibility, but for the purposes of this research it demonstrates how the historical narrative of the *Mudawwana* grew over four hundred years.

1.2. The "Problem" of the *Mudawwana*

Opening a modern edition of the *Mudawwana* one is immediately overwhelmed by the massive size of the text. The text itself is too long for it to be practical to have it in a single volume. The large size of the text is made more manageable through the division of the material into smaller parts like chapters. Each of these parts is named a *kitāb*. In the 1323/1905 Cairo edition, these *kitāb*s are grouped together in a larger section called a *juzʾ* (section/part; pl. *ajzāʾ*). Each modern edition gathers together many *kitāb*s into a *mujallad* (bound volume; pl. *mujalladāt*). This last grouping designates a separate binding. However

when simple comparisons are made between the various modern editions currently available, discrepancies immediately start to appear in the order of the *kitāb*s, sometimes in the names of the *kitāb*s, and when reading deeper, it is apparent that there are discrepancies in the content of the text itself. How did these discrepancies between the various modern editions come about? Who was responsible for them? How can they be resolved? In fact, how was the *Mudawwana*, as a text, formed?

Studying the formation of the text of the *Mudawwana* presents numerous difficulties. Its extensive size and massive breadth make a study of its content as being virtually impossible, practically requiring potential researchers to choose a specific subject and inquire as to what the *Mudawwana* has to say on that particular subject.[10] Subject content is not the primary objective of this research, rather this research will seek to better understand how the *Mudawwana*, as a text, was formed. Comparisons will be made between manuscript witnesses to the *Mudawwana* and the modern editions of the text. The roles of different personalities in forming the text will include author, writer, editor, transmitter and commentator. These roles have been filled at various times by various people. These different personalities throughout history, it will be shown, have each played a part of varying significance, in creating what is now referred to today as *al-Mudawwana al-kubrā*. In addition, one brief passage of the text will be examined in more detail, leading to a better understanding of the origin of the text and the role that authority plays within the composition of the text. Textual comparisons involving ancient manuscripts as well as modern editions will demonstrate that what is printed in modern editions cannot always be relied upon to be an accurate reflection concerning the ancient text. These comparisons will also show that the manuscripts of the ancient text itself display discrepancies, making it difficult to know who

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10. Several of these subject explorations have been done over the last century, but they are surpisingly few given the vast ocean of knowledge dealt with by the *Mudawwana*. The literature review, section 1.5, beginning on page 21, will highlight those known in Western scholarship.

was responsible for the text as we now have it. The content study will further reflect on the concept of authorship, providing a better understanding of the process a text like this could have taken in coming to the form in which it is found in the modern day.

The *Mudawwana* is one of only a handful of texts that are considered to be foundational in the formation of the Mālikī *madhhab*.[11] Named after Mālik b. Anas, the Mālikī *madhhab* normally refers to those who are affiliated with the teachings of Mālik and use them to guide their life and practice. However, there is controversy as to how these *madhāhab* were first formed. Joseph Schacht in his *Introduction to Islamic Law* put forward most clearly the idea that affiliation to the *madhāhib* of the formative period of Islam was mainly based on geography rather than personality.[12] These ancient schools, in his terminology, were formed based on a particular geographic location, such as Kufa or Madina, and not based on one specific person. He iterated that they eventually developed into a school based on a particular individual, e.g. Mālik or Abū Ḥanifa, but that their original locus of reference was a place and not a person. Further support for this theory was presented by Christopher Melchert in his seminal work on the origins of the Sunni schools of law.[13] Melchert developed the idea of how these "regional schools" became schools of law centered on a specific individual. Contending against this, Wael Hallaq argues that "regional schools" never existed, as there is insufficient evidence to demonstrate a common understanding of a

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11. Other texts cited along with the *Mudawwana* as being foundational to the Mālikī *madhhab* include the *Muawaṭṭaʾ*, attributed to Mālik, see Mālik b. Anas, *al-Muwaṭṭaʾ* (Dubai: Majmūʿat al-Furqān al-Tijāriyya, 2003), the *Risāla* of Ibn Abī Zayd al-Qayrawānī (d. 386/996) see Abū Muḥammad ʿAbd Allāh Ibn Abī Zayd al-Qayrawānī, *al-Risāla al-fiqhīyya* (Beirut: Dār Ṣadir, 2004) as well as his *Ikhtiṣār*, see Abū Muḥammad ʿAbd Allāh Ibn Abī Zayd al-Qayrawānī, *Ikhtiṣar al-Mudawwana waʾl-Mukhtaliṭa: biʾstiʿāb al-masāʾil waʾkhtiṣār al-lafẓ fī ṭalab al-maʿnā wa-ṭarḥ al-suʾāl waʾsnād al-āthār wa-kathīr min al-ḥijāj waʾl-tikrār* (Cairo: Markaz Najībawayh lil-Makhṭūṭāt wa-Khidmat al-Turāth, 2013). By the end of the 4th/10th century however, the Mālikī *madhhab* was well established in North Africa.

12. J. Schacht, *Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 6ff.

13. Christopher Melchert, *The Formation of the Sunni Schools of Law: 9th-10th centuries C.E.* (Leiden: Brill, 1997).

group within a certain region large enough to constitute a "school."[14] Although these scholars may not agree on the development as it took place, it is clear that a development transpired.

It is not the purpose of this thesis to try to confirm or refute either of these developmental theories, but to recognize that differences did exist, whether that be categorized according to individuals or regions. Individual *faqīh*s (experts/scholars in Islamic jurisprudence in the early period; pl. *fuqahāʾ*) did gather disciples and did provide teaching concerning legal matters. The opinions of one teacher did not necessarily agree with those of another, and differences between teachers based in certain regions became clearly evident over time.[15] It was these teachers, whether as a personality or as a group within a region, that attracted disciples to come and study under them, some even from a vast distance requiring lengthy journeys and resulting in stays of years and sometimes decades. These academic journeys became known in the literature simply as a disciple's *riḥla* (journey). Saḥnūn's own history indicates a desire to study under the teachers associated with Mālik, while at the same time desiring to study under Mālik himself.[16]

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14. Wael Hallaq, "From Regional to Personal Schools of Law? A Reevaluation," *Islamic Law and Society* 8 (2001).

15. These differences among the *fuqahāʾ* in the formative period are even the subject of literature in the classical period. For literature of this nature within the Mālikī *madhhab* see for example Yūsuf b. ʿAbd Allāh Ibn ʿAbd al-Barr, *Ikhtilāf aqwāl Mālik wa-aṣḥābihi* (Beirut: Dār al-Gharb al-Islāmī, 2003).

16. Al-Qāḍī ʿIyāḍ (d. 544/1149), writing about three hundred years after the time of Saḥnūn, relates a brief conversation between Saḥnūn and Ibn al-Qāsim concerning the reason why Saḥnūn never studied directly under Mālik. Saḥnūn is recorded as saying that money (or the lack thereof) was the sole reason. See al-Qāḍī ʿIyāḍ b. Mūsā, *Tartīb al-madārik wa taqrīb al-masālik li-maʿrifat aʿlām madhhab Mālik* (Rabat: Wazārat al-Awqāf waʾl-Shuʾūn al-Islāmiyya, 1403), 4:46. The veracity of this report, and others like it, can be called into question, given the length of time between the events themselves and the date recorded. However, it must be asked what can be drawn out of a recording of this conversation even if the details of the events themselves cannot be verified. In this particular instance, it would be worth noting that a reason is being sought in this conversation to explain why Saḥnūn never studied directly under Mālik. The story itself, although of doubtful accuracy, would support the fact that Saḥnūn did not ever study directly under Mālik. Here the question asked of our source should be changed. It should no longer be "What is the reason why Saḥnūn did not study under Mālik?" but rather it should become "Did Saḥnūn in fact study under Mālik or not?" For if this conversation between Saḥnūn and Ibn al-Qāsim is indeed a fabrication, then it begs the question, what was the need for the fabrication in the first place? This anecdote would provide a plausible reason why Saḥnūn was unable to see Mālik, and at the same time express Saḥnūn's personal desire to study under him directly. It would keep his academic objectives intact while providing him with a legitimate reason for not making that happen. He is able to "save face" with this story. Who can verify whether or not it is true? It is most unlikely that it will ever be either confirmed or denied in an absolute way. These are some of the incongruities within the history of the early

The mystery of the formation of the *madhāhib* of Sunni Islam is a typical point of

issue within the formative period of Islam. In the same way that *madhāhib* developed, texts

within each *madhhab* are also believed to have developed. It is a common idea that texts

formed over a period of time. In fact this time period is well known for oral history

transforming into literary history.[17] Concerning the formation of Mālikī texts, a chief

proponent that these texts formed over generations is that of Norman Calder. He presented

evidence to support a redaction to the texts of early Muslim jurisprudence of not only the

Mālikī school, but others within Sunni Islam as well.[18] In referring to the *Muwaṭṭaʾ*, he stated

with confidence that ". . . this is not an authored text: its present form is explicable only on

the assumption of a fairly extended process of development . . ."[19] Similarly, in regards to the

Mudawwana, Calder presented a sample text from *Kitāb al-Wuḍūʾ*. Through this text, Calder

asserts that there is clear evidence of a history of development within the text. As evidence,

he cites the theory that "a predominantly generalizing approach to the law is more

characteristic of a mature tradition,"[20] but allowing for the coexistence of both a casuistic and

generalizing style in the early period. He therefore concludes that since both of these styles

coexist, there must have been development of the text.

Islamic sources which need to be accepted. The biographical dictionaries are also contradictory concerning the dates of Saḥnūn's *riḥla*, some intimating that Saḥnūn made more than one trip east. Because of this, controversy has arisen as to whether or not Mālik was alive during the time of Saḥnūn's journey. Brockopp addresses this issue in his article Jonathan E. Brockopp, "Contradictory Evidence and the Exemplary Scholar: The Lives of Sahnun b. Saʿid (d. 854)," *International Journal of Middle East Studies* 43 (2011), 115-32.

17. Dutton discusses this idea in his review of Calder, cautioning that scholarship not place upon the texts of early Islam the same expectations that they would have on much later texts in Islamic law, due to the shift from oral to literary history during that time period. See Yasin Dutton, review of *Studies in Early Muslim Jurisprudence*, by Norman Calder, *Journal of Islamic Studies* 5 (1) (1994), 102-108.

18. See Norman Calder, *Studies in Early Muslim Jurisprudence* (Oxford: Clarendon Press, 1993). In this text, Calder discussed small portions of not only the *Muwaṭṭaʾ* of Mālik and the *Mudawwana* of Saḥnūn, but also the *Kitāb al-Aṣl and Kitāb al-Ḥujja ʿalā ahl al-Madīna* of Shaybānī (d. 189/805), the *Kitāb al-Umm* of Shāfiʿī (d. 204/820), the *Mukhtaṣar* of Muzanī (d. 264/878) and the *Kitāb al-Kharāj* of Abū Yūsuf (d. 182/798).

19. Calder, *Studies*, 34.

20. Calder, *Studies*, 5.

Although Calder's argument that there has indeed been development in the text itself is convincing, and adding to that the research which is being presented here, defining that development exactly is impossible. It is possible to put forward theories. However the theories will of course be restricted by the evidence available. As more evidence becomes available over time, it may be possible to further clarify the developmental process. In critiquing Calder, Dutton also takes him to task for not recognizing the assumed knowledge of the Qurʾān in the text of the *Mudawwana*. Although it is clear that both the *Mudawwana* and the *Muwaṭṭaʾ* contain, admittedly, Qurʾānic references, until a clearly datable fragment is found within the first generation of Saḥnūn's life which contains text of the *Mudawwana* including a portion of a Qurʾānic quotation or reference, it cannot be said with surety that the references to the Qurʾān found within the text of the *Mudawwana* are original to whoever was responsible for the text.

The textual content of the *Mudawwana* itself involves similar difficulties. The main challenges surrounding this text involve its composition, authorship and compilation including a dating for the completion of the text. The term authorship itself is somewhat ambiguous in this text. Three main personalities are featured throughout the text of the *Mudawwana*, Mālik, Ibn al-Qāsim and Saḥnūn. It is a complex question as to the roles each of these plays in the authorship question, this being one of the issues to be better understood as a result of this research. An early source for addressing general issues of authorship in early Islamic texts is that of Georges Vajda.[21] Providing an initial presentation of the terminology used within the primary sources themselves, Vajda defines these terms clarifying the roles that different individuals had in forming texts, e.g. *samāʿ* (heard, listened), *qirāʾa*

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21. See Georges Vajda, "De la transmission orale du savoir dans l'Islam traditionnel," in *La transmission du savoir en Islam* (*VIIe-XVIIIe siècles*), ed. Nicole Cottart (London: Variorum Reprints, 1983). Although not a problem unique to Islamic history, it is an issue which is faced within the various schools and traditions of Islamic law.

(read, as in to read or quote back to the teacher what was taught) and *waṣiyya* (testament). A more extensive presentation of terms along with categories and methodologies for assessing the classical sources through the process of transmission was completed by Sebastian Günther.[22] It is Günther's terminology which will be used as a guide through the discussion of authorship issues concerning the *Mudawwana*. Günther's terminology will be presented in Chapter Four on page 82 and the application of his ideas will follow in Section 6.5 on page 205, entitled "Assessing the *Mudawwana* According to Günther's Terminology."

In addition to authorship, it is also imperative to discuss the compilation of the text of the *Mudawwana*. Modern editions may give the impression that a completed volume of the text has been in existence for a long time. Libraries within North Africa, Europe and even North America contain manuscript fragments of *kitāb*s which form part of the *Mudawwana*. Some of these *kitāb*s are grouped together in a loose bundle, while others remain alone. In some cases, there does not appear to be any organization whatsoever concerning the association of some *kitāb*s with others. However they are clearly all part of the same "text." This makes it difficult to define of what exactly the "text" consists. A developmental process appears to have been involved. The issue of the gathering of *kitāb*s to form the *Mudawwana* will also be dealt with in this research.

The title of the text itself is an issue. Today, the text is referenced as *al-Mudawwana al-kubrā* with a fuller title including what or who is believed to be the source of this *Mudawwana*. It is commonly titled as *al-Mudawwana al-kubrā lil-Imām Mālik, allatī rawāhā al-Imām Saḥnūn b. Saʿīd al-Tanūkhī ʿan al-Imām ʿAbd al-Raḥmān b. al-Qāsim al-ʿUtaqī ʿan Imām dār al-Hijra wa-ʾawḥad al-aʾimma al-aʿlām Abū ʿAbd Allāh al-Imām Mālik b. Anas al-*

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22. Günther includes in his article the discussion of *insād*s as well as a general treatment of source criticism. See Sebastian Günther, "Assessing the Sources of Classical Arabic Compilations: The Issue of Categories and Methodologies," *British Journal of Middle Eastern Studies* 32 (2005), 75-98.

Aṣbaḥī. As convoluted as this title may appear to many westerners, its format is fairly common for a text of early Islamic jurisprudence including names of transmitters through history in its title. Teaching was often passed from one to another orally, and when it was eventually recorded in writing, the main lines of oral transmission needed to be recognized in order to ensure the readers understood which version, or transmission of the original they were referencing. One question which will be asked is when and how did the text come to be recognized as *al-Mudawwana al-kubrā* rather than simply *al-Mudawwana*?

On the matter of dating the text of the *Mudawwana*, as the nature of the text is better understood it will become clear why this can be a complicated matter. Suffice it to say at this point that it is not possible to give a singular date for the completion of the text of the *Mudawwana.*

1.3. The Modern Editions of the *Mudawwana*

1.3.1. 1323/1905 Cairo Edition

Interest in the *Mudawwana* of Saḥnūn in modern times is mainly as a result of the first publication of the text in the twentieth century. This edition was originally published by Maṭbaʿat al-Saʿāda in 1323/1905 in 16 volumes (sections) which were bound in eight hardcover volumes.[23] The editor in Cairo, Muḥammad Sāsī al-Maghribī al-Tūnisī, from his *nisba* obviously had his origins in Tunisia. This edition has become the standard with which others are compared. Much mystery surrounds the manuscript from which this text was taken. According to Muranyi, it is unknown which manuscript provided the text for this edition, however he believes it to have been from a private collection, likely in Morocco. The edition

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23. Bousquet indicates that at least one edition of this text was delivered in an eight-bound volume set, "*en 16 Tomes (formant 8 volumes reliés)*". See G.-H. Bousquet, "Ibn al-Qâsim: La Moudawwana (Recension de Sah'noûn): Analyse; Par. 1-135," *Annales de l'Institut d'Études Orientales* 16 (1958), 178. Yet Heffening remarks in one place that this was published in 16 "*Bden*" whereas in another place he states "*16-bändige Druck.*" See W. Heffening, "Die Islamischen Handschriften der Universitäts-Bibliothek Löwen (Fonds Lefort, Serie B und C): Mit einer Besonderen Würdigung der *Mudauwana* - Hss. des IV.-V./X.-XI. Jahrhunderts," *Le Muséon* 50 (1937), 86 and 89.

itself describes the manuscript—in utterly fantastical terms—as being a complete 5th/10th century manuscript of the text, from Morocco, written on gazelle parchment.[24] The specific date of the manuscript is given as 476/1083-84.[25] The copyist responsible for the manuscript is named, ʿAbd al-Malik b. Masarra b. Khalaf al-Yaḥṣubī. Further information about this manuscript is unknown. No description of the features of the manuscript, its condition, current location, owner or number and description of its folios is found anywhere.[26] It has been reprinted many times, not only in Cairo but also by a publisher in Beirut many decades later and even following that as an offset reprint by Dār al-Ṣādir. This offset reprint, one of the editions utilized in this study, although rendered in a six-bound volume set, maintains the divisions of the original 16 volumes from 1323/1905, acknowledging which *kitāb*s were part of which volume in the original 1323/1905 Cairo edition. Pagination of the offset reprint edition follows the new volume breakdown.

1.3.2. 1324/1906-07 Cairo Edition

Another publication of the text of the *Mudawwana* was made just one year later in 1324/1906-07 by a second publisher, al-Maṭbaʿa al-Khayriyya.[27] (See figure 1 below for the

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24. Saḥnūn, *Mudawwana* 1323/1905 Cairo edition. The 1323/1905 Cairo edition states the following: "This great book has been printed from a very ancient copy whose history is eight hundred years old, written on gazelle skin ... and present in the footnotes of this copy are many lines from the Imams of the [Mālikī] *madhhab* imams, like al-Qāḍī ʿIyāḍ and and the likes of him and it has been attributed to him through it that the *Mudawwana* has four thousand *ḥadīth* of the messenger of Allāh (PBUH) and thirty thousand of his traditions and forty thousand of his questions." The number of references is clearly exaggerated. See 1:241.

25. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 6:476.

26. The Library in Alexandria has in its archives a complete text of the *Mudawwana* considered to be the most precious acquisition in its collection. It is possible that this manuscript is the one which was used for the publication of the first modern edition in Cairo in 1323/1905. See Walid Saleh, "Report from Alexandria," (2013).

27. Abū Saʿīd ʿAbd al-Salām b. Saʿīd al-Tanūkhī Saḥnūn, *al-Mudawwana al-kubrā lil-Imām Mālik b. Anas al-Aṣbaḥī, riwāyat al-Imām Saḥnūn b. Saʿīd al-Tanūkhī ʿan al-Imām ʿAbd al-Raḥmān b. al-Qāsim ʿan riḍwān Allāh ʿalayhim ajmaʿīn* (Cairo: al-Maṭbaʿa al-Khayriyya, 1324/1906-07). It is this edition which Heffening says was published in a four volume set. See Heffening, "Islamischen Handschriften," 89. Some confusion seems to exist concerning the volume published in 1324 as the Hijri date corresponds to 1906-07, having led some to conclude that there were three separate editions published in 1905 and 1906 and 1907. However, no record can be found of a third publication of the *Mudawwana* in the year 1907. In order to reduce confusion, and yet to clearly differentiate between these two separate publications of the *Mudawanna*, the publication years for only

title page of volume two of the 1324/1906-07 Cairo edition.) Along with the text of the *Mudawwana*, this 1324/1906-07 publication included the commentary on the *Mudawwana* of
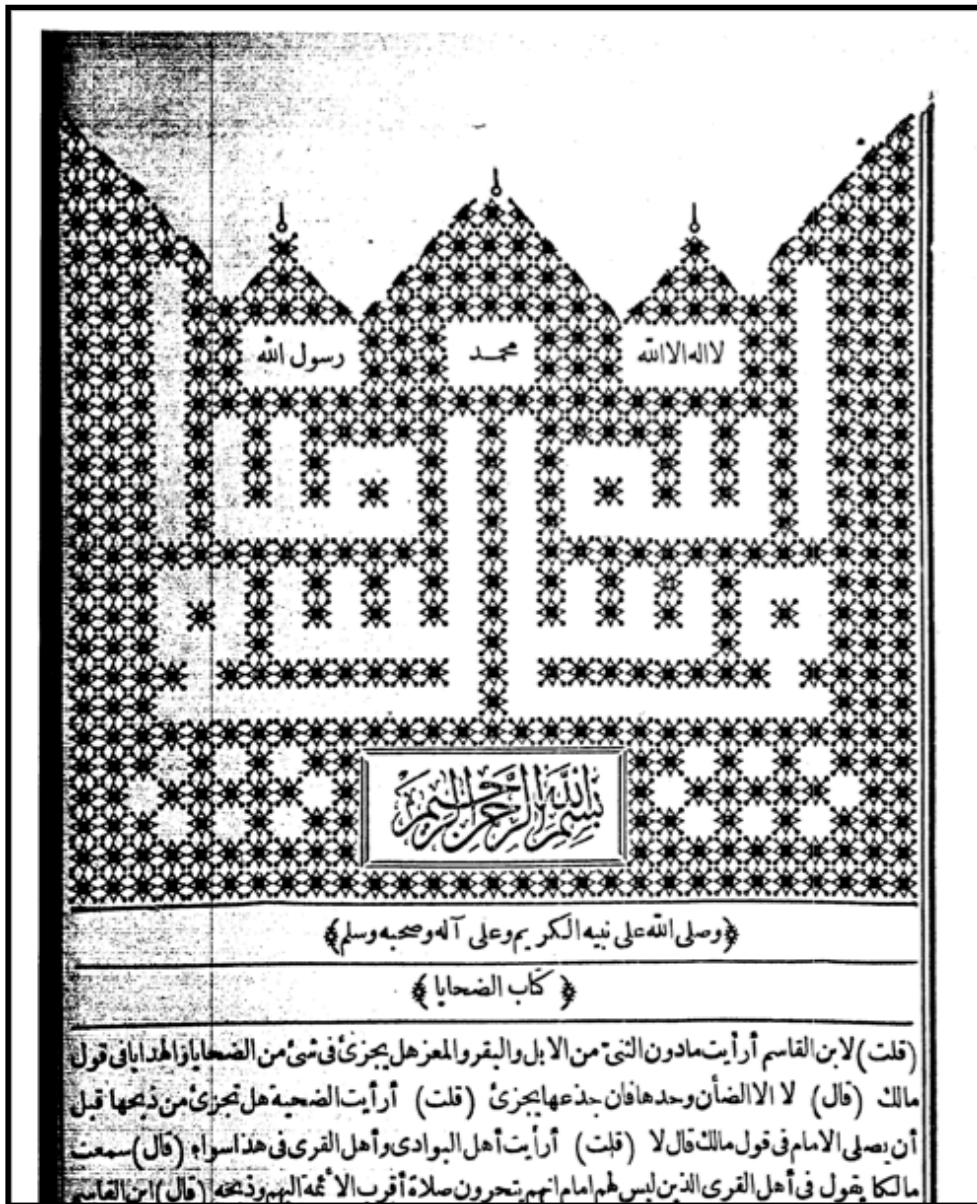
Figure 1. Title page of volume two of the 1324/1906-07 Cairo edition of the *Mudawwana* (Vol. 2:1).

Ibn Rushd (*al-Jadd*: the grandfather; d. 520/1126), *al-Muqaddimāt al-mumahhidāt: li-bayān mā-ʾqtaḍathu rusūm al-Mudawwana min al-aḥkām al-sharʿiyyāt waʾl-taḥṣīlāt al-muḥkamāt li-ummahāt masāʾilihā ʾl-mushkilāt.*[28]

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these two editions will be referred to in both Hijri and Gregorian dates throughout this dissertation.

28. The designation, the grandfather, is given to Ibn Rushd to distinguish him from his grandson, the well-

One writer, writing significantly closer to the time of the publication of these first editions, has noted that although these publications came from two different manuscripts, the differences between them relate to formal characteristics and not to the construction of legal elements.[29] The difficulty in making such statements is that no evidence is provided which would demonstrate that the copies are taken from different manuscripts. Other than the physical description of the manuscript itself given above, no description of its current whereabouts, owner or caretaker are given. No identification information is given which would enable one to know whether or not a future edition comes from the manuscript or not. This practice of providing as little information about the sources as possible prohibits further academic research and understanding. Without the evidence that a different manuscript was used in preparing this second publication, many would assume that any discrepancies between the two publications should be attributed to editorial discretionary practice, and that no new additional sources were used in the preparation of this edition.[30]

1.3.3. Modern Editions in Recent Decades

For many years no further publications of the text were made until a four-volume edition was published in 1978 in Beirut by Dār al-Fikr. This same publisher came out with another edition, the volumes released over a period of a few years, beginning to be published in 1991. It includes two other medieval texts both providing biographical information on

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known philosopher Ibn Rushd or Averroes. The grandfather was regarded in his day as the most prominent Mālikī jurist in the Muslim West. See J.D. Latham, "Ibn Rushd," *Encyclopaedia of Islam, Second Edition* (Brill Online, 2014). More information concerning the commentaries of Ibn Rushd and others will be presented in section 3.3 beginning on page 75.

29. See Antonio d'Emilia, "La Compravendita con Patto d'Opzione Secondo Alcune Fonti del Diritto Musulmano Malikita," in *Scritti di Diritto Islamico*, ed. Francesco Castro (Rome: Istituto per l'Oriente, 1976), 313n6.

30. This situation is perpetuated and exacerbated by modern technology in websites. For example, websites which post Arabic historical texts often give no reference or publication information, they simply publish the "text" as it appears in some publication. For a posting of the *Mudawwana*, see for example http://library.islamweb.net/hadith/display_hbook.php?bk_no=20. Without any information regarding the sources which underlie these texts, critical scholarship is impossible.

Imām Mālik—the first, *Kitāb Tazyīn al-mamālik bi-manāqib sayyidnā al-Imām Mālik*, by Jalāl al-Dīn al-Suyūṭī (d. 911/1505), and the second being *Kitāb Manāqib* (Virtues) *sayyidnā al-Imām Mālik*, by ʿĪsā b. Masʿūd al-Zawāwī (d. 743/1342). This edition also incorporates the commentary of Ibn Rushd. In addition to more biographical information on Mālik himself, these texts provide biographical information on Saḥnūn and background to the development of the text of the *Mudawwana*. Although none of this was new information at the time, to have Ibn Rushd's introduction included in the text allowed readers to better understand the known context for the development of the *Mudawwana*.[31] The addition of further texts along with the text of the *Mudawwana* provides only the most meagre of evidence that this publication might in fact be an edition which is based on a different manuscript. But in no way can this evidence be considered sufficient grounds to confirm that speculation. As publishers tend to be very circumspect concerning the sources they use for the publications printed, confirmation of sources is near impossible. Internal evidence, within the text of the published documents, is the only means with which to support, confirm or deny the theory that different source manuscripts were used. This is the methodology which will be used in this research.

1.3.3.1. 1994 Dār al-Kutub al-ʿIlmiyya

A four-volume edition of the *Mudawwana* was published in Beirut in 1994 by Dār al-Kutub al-ʿIlmiyya. This edition consists of four volumes of text from the *Mudawwana*, with an additional volume containing the commentary of Ibn Rushd, *al-Muqaddimāt al-mumahhidāt*. This edition contains no footnotes, the text appears to be very plain and with a modernized font. Concerning the text, the only observations which attract the eye is a

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31. It must be clearly understood that the introduction provided by Ibn Rushd was the known, accepted or claimed understanding to the background of the *Mudawwana* during the time of Ibn Rushd.

decorative ligature for the *taṣliya*[32] as well as decorative parentheses which enclose *sūra*

references of the Qurʾān. An index at the end of each volume, acting like a table of contents,

helps the reader to locate subject headings within the *kitāb*s of that volume on the pages on

which they occur. No indication is given whatsoever for the source text of the modern

volume. This edition begins with the two additional medieval biographical texts published in

1991 by Dār al-Fikr.

1.3.3.2. 1999 al-Maktaba al-ʿAṣriyya

A nine-volume text of the *Mudawwana* was published in 1999 both in Mecca and in

Sidon by al-Maktaba al-ʿAṣriyya.[33] The final two volumes of this edition include the

commentary by Ibn Rushd, *al-Muqaddimāt al-mumahhidāt*, as well as, for the first time, an

index of Qurʾānic quotations and *ḥadīth*. Occasional footnotes in this edition list *sūra*s for

Qurʾānic quotations, and *ḥadīth* references such as al-Tirmidhī and al-Dāraquṭnī.

1.3.3.3. 2005 Muʾassasat al-Nadāʾ

One other publication of the *Mudawwana* was made in 2005 by Muʾassasat al-Nadāʾ

in Abu Dhabi and in Beirut in six volumes.[34] This edition provides much more extensive

indexing, including indexes for Qurʾānic references, almost 600 pages of indexes for *aḥādīth*,

āthār and *masāʾil*, in addition to the usual indexes indicating subjects covered in the text of

the *Mudawwana*. One innovative editorial addition to this edition is the ordinal numbering of

the *kitāb*s of the *Mudawwana*, each subject within the *kitāb*s, as well as the division and

numbering of each conversational piece within the subjects. Numbering of the subjects within

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32. *taṣliya*: the phrase commonly introducing Muhammad, often translated "peace be upon him"

33. This edition was consulted for this research.

34. It is likely that this is a re-publication of a twelve-volume edition that was published in 2002 in the UAE by al-Shaykh Zāyid b. Sulṭān Āl Nahayān as cited by Umar F. Abd-Allah Wymann-Landgraf. This edition was also consulted for this research. See Umar F. Abd-Allah Wymann-Landgraf, *Mālik and Medina: Islamic Legal Reasoning in the Formative Period* (Leiden, Boston: Brill, 2013), 64n126.

the *kitāb*s is independent of other *kitāb*s, so the numbering begins in each *kitāb* from zero. Yet

the conversational pieces within the subjects of the *Mudawwana* are numbered consecutively

from the beginning of the first volume to the end of the last. Every time the speaker changes

from the first person (*qultu*) to the third person (*qāla*), a new ordinal number is given. Speech

quoted from a third party not present in the "conversation" between Saḥnūn and Ibn al-Qāsim

is left within the section of the quote of the speech of Ibn al-Qāsim. This means that there are

over 23,000 components of speech fragments numbered, presumably allowing for greater

ease in the location of specific portions of the text.

1.3.4. Summary of the Printed Texts

Comparisons between modern editions of the *Mudawwana* will seek to discover an

explanation for the multitude of discrepancies which seem to exist amongst them. This in turn

will raise questions concerning the underlying source texts of the modern editions. Given that

the first two modern editions were published just one year apart from each other, it is

tempting to presume that the publication of the 1324/1906-07 Cairo edition relied either

solely on the modern publication of the 1323/1905 Cairo edition, or that edition along with

the same sources upon which it relied. When comparisons between the modern editions of the

Mudawwana are made, it appears that other sources were available to the 1324/1906-07

Cairo edition in addition to simply the 1323/1905 Cairo edition of the *Mudawwana*. The roles

of modern editors in producing these modern editions will be better understood through this

comparison.

Appendix A provides both the transcription and the translation of the *kitāb*s into

English. Four modern editions of the *Mudawwana* were consulted for this study, two of them

extensively. The four include the first modern edition published, the 1323/1905 Cairo edition

but in the offset re-print edition from Dār al-Ṣādir noted above,[35] the 1994 edition published

by Dār al-Kutub al-ʿIlmiyya in Beirut,[36] the 1999 edition published by al-Maktaba al-

Aṣriyya,[37] and the 2005 edition published by Muʾassasat al-Nadāʾ in Abu Dhabi.[38] A more

comprehensive chart in Appendix B displays various details concerning the contents of each

of the four modern editions of the *Mudawwana* used in this research, providing greater ease

in comparing these editions.[39] Details include the names of the *kitāb*s appearing in each

edition, the volume within which the *kitāb*s are found in each edition, the page numbers

where the *kitāb*s begin and end, along with the total number of pages of each *kitāb*. The order

of the *kitāb*s of each edition is preserved. In some instances, blank cells will appear in the

spreadsheet of Appendix B in order to allow for a comparision of the order of the *kitāb*s

between modern editions.

1.4. Review of Scholarly Literature

An initial article citing the signficance of the 1323/1905 Cairo edition of the text was

published by Émile Amar in 1910.[40] Amar highlighted not only the significance of the

original manuscript but also the Islamic scholarly resources used in publication. His

description is too rich to miss: "une copie complète de la Moudawwana, entièrement écrite

sur parchemin vierge (*raqq ghazâl*) et remontant au cinquième siècle de l'hiégire, ce qui est

d'une belle antiquité pour un manuscrit arabe, car, pour les premiers siècles de l'hiégire, nous

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35. See page 15.

36. This is referred to as the Beirut edition. This edition is suspected of being a reprint of the 1324/1906-07 Cairo edition. This suspicion will be investigated further in 5.2.4.5 on page 143.

37. This is referred to as the Mecca edition.

38. This is referred to as the Abu Dhabi edition.

39. It is Appendix B which should be referenced for corresponding line numbers from the spreadsheet following the titles of the *kitāb*s in square brackets throughout this research. This is for ease in locating references on the chart of *kitāb*s in the *Mudawwana*.

40. Émile Amar, "La grande *Moudawwana*," *Revue de Monde Musulman* 10 (1910), 524–32.

n'avons que des Qorans."[41] Great care was taken, according to Amar, in the editorial process, which was conducted under the supervision of the scholarly professors of Al-Azhar University, notably "le chaikh al-Bichrî et le chaikh ʿAlîch."[42] Amar considered these jurisprudents to be the most qualified of the Mālikī scholars in Egypt, providing their observations of the text. The manuscript also provided another very important piece of evidence concerning its dating. At the end of *Kitāb al-Ḥajj al-awwal,* a certificate of achievement (lit. hearing, *samāʿ*—having attended lessons provided by the teaching jurist qualifying the attendee to now teach the material)[43] was present, signed by a *faqīh* by the name of ʿAbd al-ʿAzīz b. ʿĀmir, dated the month of Dhū ʾl-Qaʿda 428/August-September 1037. This attests, according to Amar, to three separate important points concerning the manuscript—its age, provenance, and that at least one part of the text is authentic and conforms to Saḥnūn's original. Amar's caution is warranted. The evidence can only attest to that which the evidence attests. In this case, it testifies that this specific part of the *Mudawwana* was heard by this particular student by this individual teacher who himself heard it by the list of uninterrupted transmitters. Although the information is clear, one must also weigh the evidence appropriately.

An article by W. Heffening appeared in 1937 describing five small groups of manuscript fragments of the *Mudawwana* belonging to the University Library of Leuven.[44] The collection has a total of 27 folios. Although the modern printed editions of the *Mudawwana* had been available for more than 30 years by this time, no one had yet written anything of a comparative nature concerning these editions and any known manuscript

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41. Amar, "La grande *Moudawwana,*" 531.

42. Amar, "La grande *Moudawwana,*" 531.

43. For more background on hearing certificates, see above page 12 and footnote 21 where the article of Vajda is referenced. For Vajda's article, see Vajda, "transmission orale."

44. Heffening, "Islamischen Handschriften," 86-100.

fragments. Heffening compared the text found in the modern editions with that of the manuscript fragments in Leuven, including both modern editions avaiable at that time, the 1323/1905 and 1324/1906-07 Cairo editions. His article includes a brief description of all five groups of manuscript fragments, identified as B1 through B5, indicating which parts of the greater text are found on the folios. Some comparative work is recorded concerning groups B1 and B2, but the majority of his work focuses on group B5. The folios in group B5 are consecutive, two double-sided folios and relate to just one part of the great text of the *Mudawwana* rather than being dishevelled folios from various *kitāb*s. Heffening's detailed comparative work between the manuscript fragments and the two modern editions revealed significant differences between these three versions of the text. Heffening's research suggests that the underlying sources for the 1323/1905 Cairo edtion and the 1324/1906-07 Cairo edition are not consistent. Additionally, as the manuscript fragments in Leuven are in some places consistent with the 1323/1905 Cairo edition and in other places consistent with the 1324/1906-07 Cairo edition it must not come from the same source as the underlying sources for either of the modern editions. Heffening's article has raised many questions about the nature and sources of the *Mudawwana*.

In 1953 an article appeared, the first of those focused on content within the *Mudawwana*, written by Antonio d'Emilia concerning *Kitāb al-Ghaṣb* (usurpation) found within the *Mudawwana*.[45] In his study, d'Emilia explored not only the topic of *ghaṣb*, including the economic, political and social factors of the issue, but also briefly discussed the sources of production and knowledge of Islamic law as evidenced in the *Mudawwana*'s treatment of *ghaṣb*. The lack of clarity in separating sources of production and knowledge

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45. Antonio d'Emilia, "Il *Kitāb al-Ġaṣb* Nella *Mudawwanah* di Saḥnūn," *Rivista Degli Studi Orientali* 28 (1953), 79–98.

was a significant factor as stated by d'Emilia.[46] His exploration hoped to further define and separate these two sources, but concluded that in many instances the action of *qiyās* brought about new law, founded in a source of production based in knowledge.[47] D'Emilia included an observation within his study of Saḥnūn's questioning of Ibn al-Qāsim of the legal justification in a specific instance where a seizure took place involving a slave who subsequently died. It is in this example that he demonstrates that the doctrine becomes a source of the production of the law. Ibn al-Qāsim's teaching, in his responses to Saḥnūn, constitute the production of Islamic law within the Mālikī school as presented here. He attributes to both the opinions of Mālik and those of Ibn al-Qāsim as being part of the sources of production of Islamic law.[48] D'Emilia's articles on the content of the *Mudawwana* demonstrate a good understanding of the significance of the *Mudawwana*, yet they are rarely cited in the literature.

More notice of the *Mudawwana* as a work of Mālikī *fiqh* came to the attention of the scholarly world with Ibrahim Chabbouh's modern publication of an ancient register of the mosque library of Kairouan dated from 693/1293-94.[49] Three entries concerning the *Mudawwana* were made on this old list of the library's contents, published in 1956, collectively containing more than two hundred booklets (*daftar*) of the *Mudawwana*, some specifically listed as being on parchment. It is interesting to note the terminology as the ancient list refers to *daftar* rather than the expected *kitāb* or *kurrāsa*.

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46. d'Emilia, "Il *Kitāb al-Ġaṣb*," 18n2.

47. See Antonio d'Emilia, review of *La doctrine comme source créatrice de la règle juridique en droit musulman*, by Hamad A. Rabie, *Oriente Moderno* 30:7/9 (1950) 166-67.

48. d'Emilia, "Il *Kitāb al-Ġaṣb*," 19.

49. The ancient list gives the briefest of descriptions of individual manuscripts as well as manuscripts that are grouped together, often indicating the text or author of the work, if known. References cited here refer to first the page number in the article, followed by the reference to the specific entry number. Ibrahim Chabbouh, "Sijīll qadīm li-maktabat jāmiʿ al-Qayrawān," *Revue de l'Institut des Manuscrits Arabes: Majallat maʿhad li-makhṭūṭāt al-ʿarabiyya* 2 (1956), 359n58, 362n72, 369n121.

Just a few years later, a valuable resource by Bousquet was published in a number of journal issues concerning the content of the *Mudawwana*.[50] Although entitled *Analyse*, Bousquet's work was rather more of a condensed outline or summary than an analysis. Since little had been published concerning the *Mudawwana* up until that point, Bousquet's articles were a great contribution to Mālikī studies. He provided first, in his introduction, a brief description of the larger work of the *Mudawwana* both in terms of content and format. His objective was not to provide a lengthy description or analysis of the text, but rather to draw awareness to the text itself, making it at least one step more accessible to the scholarly community. Following this introduction, Bousquet then provided a brief summary of the subjects dealt with in each of the books of the *Mudawwana*. It took several years to publish the series beginning in 1958 and concluding in 1962. One minor drawback concerns the ordering of the articles. They were published in two separate journals over the course of these five years and the summaries of contents were not published following the order of the text. Bearing that in mind, the resource was an excellent contribution to scholarly work. Several years later, and without the ability to consult the main text of the *Mudawwana* in Arabic, Bousquet published an index to the subject matter of the *Mudawwana*.[51] Although the subject matter of the *Mudawwana* is overwhelmingly extensive, Bousquet made an attempt to catalogue the subject matter according to paragraph numbers, the paragraphs corresponding

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50. Bousquet, "La *Moudawwana*: Analyse; Par. 1-135." G.-H. Bousquet, "Ibn al-Qâsim: La *Moudawwana* (Recension de Sah'noûn): Analyse; Par. 564-659," *Revue Algérienne, Tunisienne et Marocaine de Législation et Jurisprudence* 74 (1958), 189-211. G.-H. Bousquet, "Ibn al-Qâsim: La *Moudawwana* (Recension de Sah'noûn): Analyse; Par. 136-442," *Annales de l'Institut d'Études Orientales* 17 (1959), 169-211. G.-H. Bousquet, "Ibn al-Qâsim: La *Moudawwana* (Recension de Sah'noûn): Analyse; Par. 660-744," *Revue Algérienne, Tunisienne et Marocaine de Législation et Jurisprudence* 75 (1959), 69-85. G.-H. Bousquet, "Ibn al-Qâsim: La *Moudawwana* (Recension de Sah'noûn): Analyse; Par. 443-563 & 1306-1898," *Annales de l'Institut d'Études Orientales* 18-19 (1960), 73-165. G.-H. Bousquet, "Ibn al-Qâsim: La *Moudawwana* (Recension de Sah'noûn): Analyse; Par. 745-1009," *Revue Algérienne, Tunisienne et Marocaine de Législation et Jurisprudence* 76 (1960), 49-79. G.-H. Bousquet, "Ibn al-Qâsim: La *Moudawwana* (Recension de Sah'noûn): Analyse; Par. 1010-1305," *Revue Algérienne, Tunisienne et Marocaine de Législation et Jurisprudence* 77 (1961), 1-30. G.-H. Bousquet, "Ibn al-Qâsim: La *Moudawwana* (Recension de Sah'noûn): Analyse; Par. 1899-2949," *Annales de l'Institut d'Études Orientales* 20 (1962), 113-240. Bousquet's work was based on the 1323/1905 Cairo edition.

51. G.-H. Bousquet, "La *Mudawwana*: Index," *Arabica* 17 (1970), 113-150.

to subject headings within the text of the *Mudawwana*. To date, his index, which provides elementary indexing based on subject, is still the only known resource of its kind concerning Saḥnūn's work. No other individual has attempted to create any type of index to the subject matter of the *Mudawwana*. Given that Bousquet published in French, the subject of the contents of the *Mudawwana* became accessible to a much wider audience than was previously the case.

In 1967, the same year that *The Origins of Muhammadan Jurisprudence* was published, Josef Schacht drew further attention towards the rich ancient manuscript library in Kairouan. In listing the manuscripts known at the time in the holdings, he referenced the *Mukhtaliṭa*, which he identified as another name for the *Mudawwana*.[52] Early research on the *Mudawwana* often led to the misidentification of certain references to it such as this one from Schacht. As time went on clarity of the *Mukhtaliṭa* did not fully materialize, and further research is still necessary today. The studies of Muranyi demonstrate that the *Mukhtaliṭa* is not synonymous with the *Mudawwana*, nor is it synonymous with the *Asadiyya*.[53] In retrospect, it seems very strange that at the time of Schacht, no further manuscripts of the *Mudawwana* were known to exist in Kairouan.

Labor partnerships as defined in Ḥanafī and Mālikī law was the topic of a study published by Abraham Udovitch in 1967.[54] Udovitch compares the permissibility of different forms of partnerships as they existed in early Ḥanafī and Māliki law, relying on early legal texts including the *Mudawwana*. His content study focuses on this one topic within the early sources, drawing on the information from *Kitāb Sharika* from the *Mudawwana*, as well as

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52. J. Schacht, "On Some Manuscripts in the Libraries of Kairouan and Tunis," *Arabica* 14 (1967), 242.

53. Muranyi's findings on the *Mukhtaliṭa* provide the best clarification on this obscurity. They are described further in note 149 on page 59.

54. Abraham L. Udovitch, "Labor Partnerships in Early Islamic Law," *Journal of the Economic and Social History of the Orient* 10 (1) (1967), 64-80.

sources from the Ḥanafī *madhhab*, including Sarakhsī's *Mabsūṭ* and Shaybānī's *Kitāb al-Aṣl*. Udovitch describes the basis for labor partnerships in both *madhāhib*, drawing out the differences and similarities between them. He provides much translated text, allowing the texts to speak for themselves to his audience, giving exposure to the text. There is no attempt on his part to provide any analysis of the *Mudawwana* as a whole, but rather simply to focus on the content of this particular subject. It is interesting to note that the name of the *kitāb* within the *Mudawwana* from which this material comes, that is *Kitāb al-Sharika*, is not mentioned once. It appears that in the 20th century, the focus is clearly on the larger text, rather than on the individual *kitāb*s.[55]

During the same year, Fuat Sezgin published his foundational work on the history of Arabic mansucripts, *Geschichte des Arabischen Schrifttums*.[56] This now fundamental work advanced the understanding of almost every single discipline which relies on Arabic manuscript evidence. Sezgin's section on Mālikī *fiqh* alone changed the knowledge with which scholars were able to move forward concerning any subject in this discipline. The *Mudawwana* as a work of Mālikī *fiqh* became available for further study with Sezgin's list of known manuscripts as well as a brief description of each one. Sezgin lists Ibn al-Qāsim as the first "*Verfasser*" of the *Mudawwana*.[57] In terms of content of the *Mudawwana*, this was not an advance from what Bousquet had presented, but it made research on the manuscripts of the text of the *Mudawwana* much more accessible.

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55. This is in contrast to the focus during the Medieval period where the focus is clearly on the *kurrāsa*. See below page 92.

56. Fuat Sezgin, *Geschichte des Arabischen Schrifttums: Band I Qurʾānwissenschaften,* Ḥadīth*, Geschichte,* Fiqh*, Dogmatik, Mystik: Bis ca. 430 H.* (Leiden: Brill, 1967).

57. Sezgin also recognized a role for Asad b. al-Furāt in the formation of the *Mudawwana*, seeing Ibn al-Furāt's *riwāya* of the *Mudawwana* as leading to the *Asadiyya*. See Sezgin, *GAS*, *I*, 465.

Save for the work of Antonio d'Emilia, the fifteen years from 1967 to 1982 were relatively quiet with little forward motion in the academic world concerning the *Mudawwana*. In addition to his previous study on *Kitāb al-Ghaṣb* in the *Mudawwana*, three additional content studies were published, actually re-printed, all concerning *Kitāb al-Bayʿ al-khiyār*[58] (sales with an option).[59] As they came together in one volume concerning studies in Islamic law rather than dispersed in separate journals from different years, they garnered somewhat more attention than the original articles. The three studies dealt specifically with the nature of *bayʿ al-khiyār*, demonstrating the unique nature of this type of sale where although a form of agreement has taken place, the transaction itself has not been completed and as such it is not considered binding. It is the content of the legal concept which is of interest for d'Emilia, as he studies this interesting form of transaction and its distinctive nature within Mālikī law.[60] Given its interesting formula and unique characteristics, it is noteworthy that only one other writer[61] has focused on this particular subject concerning the *Mudawwana*. Further study concerning the development and source origins of *bayʿ al-khiyār* would be useful for the greater discipline of the development of Islamic law.

Another topic dealt with in the *Mudawwana* which has received considerable attention in recent decades is the built environment. In 1982, Besim Hakim, an architect and

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58. Compare the 1994 Beirut edition which entitles this *Kitāb al-Bayʿīn biʾl-khiyār*.

59. Antonio d'Emilia, "Il *Bayʿ al-Khiyār* Nella *Mudawwanah*," in *Scritti di Diritto Islamico*, ed. Francesco Castro (Roma: Istituto per l'Oriente, 1976)., originally appeared as *Rivista degli studi Orientali*, XXIV, 1949, 45-58, d'Emilia, "La Compravendita.", originally appeared as *Studia et documenta historiae et iuris* (*SDHI*) X, (1944) 167-183, and Antonio d'Emilia, "La Struttura della Vendita Sottoposta a *Khiyār* Secondo la Sedes Materiae dell'*al-Mudawwanah*: (Nota Preliminare)," in *Scritti di Diritto Islamico*, ed. Francesco Castro (Rome: Istituto per l'Oriente, 1976), originally appeared in *Oriente Moderno* XXI (1941) 86-98. Note that each of these articles were reprints of work that d'Emilia had done in the 1940s.

60. D'Emilia notes the fundamental point of importance in *bayʿ al-khiyār* is that although the exchange is discussed and the value of the exchange agreed upon, if the consent for the exchange has not been given and the transaction itself has not been completed, then the sale itself has no binding quality to it. As a result, it is clearly fundamentally different from a normal sale in Mālikī law as it has no binding effect until consent is given for the transaction. There is no obligation upon the seller until that consent is given. See d'Emilia, "La Struttura," 304.

61. See the description below of the work of Rüdiger Lohlker.

urban design consultant by trade, as well as a scholar in the area of Islamic building law,

began to publish a number of articles dealing with building codes in medieval and modern

Islam and their roots in Islamic law.[62] With a greater body of work on building codes and

building law being found within the Mālikī *madhhab*, especially during the medieval period,

most of Hakim's work has been focused on the geographic region of North Africa and the

legal works within this *madhhab*. Since that time, Hakim has written several articles and a

book concerning not only the built environment,[63] but also the influence of *ʿurf* (custom)[64]

and other background elements to the discipline.[65] Hakim's articles are a good starting point

for anyone interested in pursuing the subject of the built environment in Islamic law.

Although much has been written about this subject, early developments from the formative

period which influenced the final forms of building law are still not fully understood. There is

a direct link between the work of the *Mudawwana* and that of the medieval period which still

must be clarified.

In 1983 a most interesting study of the *Mudawwana* appeared by José María Fórneas

simply entitled "*Datos para un estudio de la Mudawwana de Saḥnūn en al-Andalus.*"[66]

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62. Besim S. Hakim, "Arab-Islamic Urban Structure," *The Arabian Journal for Science and Engineering* 7 (1982), 69-79. This first article of Hakim's provided a study of traditional indigenous building within the Arab world, his impetus being a desire to better understand traditional building practices in reaction to the borrowing of architectural forms in the modern era. His discovery was that much had been written within the Mālikī *madhhab* concerning legal building codes and practices. See especially Abū Muḥammad ʿAbd Allāh Ibn Abī Zayd al-Qayrawānī, *al-Nawādir waʾl-ziyādāt ʿalā mā fī ʾl-Mudawwana min ghayrihā min al-ummahāt* (Beirut: Dār al-Gharb al-Islāmī, 1999), Ibn al-Imām al-Tuṭīlī, *al-Qaḍāʾ biʾl-mirfaq fī ʾl-mabānī wa nafī ʾl-ḍarara* (Tunis: Markaz al-Nashr al-Jāmiʿī, nd) and al-Shaykh al-Marjī al-Thaqafī, *Kitāb al-ḥīṭān* (Beirut: Dār al-Fikr, 1994) for source literature concerning this subject within the Mālikī *madhhab*.

63. Besim S. Hakim, *Arabic-Islamic Cities: Building and Planning Principles* (London: Kegan Paul International, 2008) and Besim S. Hakim, "Built Environment," *Encyclopaedia of Islam, Three* (Brill Online, 2009).

64. Besim S. Hakim, "The ʿ*Urf*ʾ and its Role in Diversifying the Architecture of Traditional Islamic Cities," *Journal of Architectural Planning and Research* 11 (1994), 108-27.

65. Besim S. Hakim, "Mediterranean Urban and Building Codes: Origins, Content, Impact, and Lessons," *Urban Design International* 13 (2008), 21-40 and Besim S. Hakim, "The Generative Nature of Islamic Rules for the Built Environment," *International Journal of Architectural Research* 4 (2010), 208-12.

66. J.M. Fórneas, "Datos Para un Estudio de la *Mudawwana* de Saḥnūn en al-Andalus," *Actas del IV Coloquio Hispano-Tunecino, 1979, Palma de Mallorca, Spain* (1983), 93-118.

Although focused on the regional use of the *Mudawwana* in Andalusia and its transmission, the observations and conclusions have relevance for the entire region upon which the *Mudawwana* had influence. Using four sources for the transmission of the *Mudawwana*,[67] Fórneas traced the transmission lines in a schematic format similar to the *isnād* trees developed concerning the transmission of *ḥadīth*. Fórneas's study also provided the sources which followed the *Mudawwana*, specifically in Andalusia, demonstrating the breadth of its influence in the later medieval period in that region.

Miklos Muranyi began to publish on the subject of the *Mudawwana* in 1989.[68] To date, he is the most prolific Western researcher concerning the Mālikī school specifically in the matter of the documents which are housed or have come out of the city and mosque library of Kairouan. His text on Saḥnūn's *Mudawwana*[69] is extensive, and provides more information on the *Mudawwana* and its genesis than all other scholarly resources combined.[70] That said, Muranyi's work focuses on observation rather than analysis and conclusions. He describes many of his observations concerning the manuscript data he has had access to but often neglects to explain the impact of these observations. Additionally, his aim appears to be to disprove those of the "skeptical" school—those who are not so quick to affirm an early date for the majority of the documents of the early formative period either in Kairouan or

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67. Fórneas cited the following texts in his research: the *Fahrasa* of Ibn ʿAṭiyya of Granada, Abū Muḥammad ʿAbd al-Ḥaqq b. Ghālib (d. 451/1147), the *Ghunya* of al-Qāḍī ʿIyāḍ b. Mūsa (d. 544/1149), the *Fahrasa* of Muḥammad b. Khayr of Seville (d. 575/1180) and ʿUnwān al-dirāya of Aḥmad b. Aḥmad al-Ghubrīnī (d. 1315). See Fórneas, "Datos," 96-97.

68. Miklos Muranyi, "Notas sobre la transmisión escrita de la *Mudawwana* en Ifrīqiya según algunos manuscritos recientemente descubiertos. (Qirawaner Miszellaneen III.)," *Al-Qantara: Revista de Estudios Árabes* 10 (1989), 215-31.

69. Miklos Muranyi, *Die Rechtsbücher des Qairawāners Saḥnūn B. Saʿīd: Entstehungsgeschichte und Werküberlieferung* (Stuttgart: Deutsche Morgenländische Gesellschaft: Kommissionsverlag Franz Steiner, 1999). For a review of Muranyi's work see Joseph E. Lowry, review of *Die Rechtsbücher des Qairawāners Saḥnūn B. Saʿīd: Entstehungsgeschichte und Werküberlieferung*, by Miklos Muranyi, *Journal of the American Oriental Society* 123 (2) (2003), 438-40.

70. Muranyi's work is sometimes more anecdotal than it is scientific due to the lack of sufficient referencing in order to follow-up on his work.

other locations throughout the Muslim world. As a result, his own data needs to be sifted and interpreted in order to understand its full value. Without a doubt, Muranyi is aware of more facts concerning the riches of the Mālikī school documents in Kairouan than any other scholar in the Western world. His extensive work is founded on his broad foundation of understanding of the documents in Kairouan in his *Beiträge*.[71] This text provides the name, a brief description and the background to each document he was able to access of the ancient mosque library of Kairouan during his most extensive research period.

Similar to the study provided by d'Emilia on *bayʿ al-khiyār*, Rüdiger Lohlker published a study on commercial law in early Mālikī writings, focusing on *Kitāb al-Buyūʿ* of the *Muwaṭṭaʾ* and other *kitāb*s in the *Mudawwana* which deal with this subject.[72] He dealt with the concept of *salaf* (pre-payment; synonymous with the word *salam* as used in the Mālikī and other *madhhabs*) and more developed trade relations in Egypt and the Maghrib, specifically the use of money in relation to trade by barter. Lohlker comments somewhat on the composition of the *Mudawwana*, identifying Mālik and Ibn al-Qāsim alone as "*Verfasser*" whereas he sees the role of Saḥnūn as being most likely that of a final redactor (*Endredakteur*).[73] One of Lohlker's reasons for his conclusions concerning the different roles played by Mālik, Ibn al-Qāsim and Saḥnūn in the creation of the *Mudawwana* is his observation that the *Mudawwana*, as compared to other Mālikī legal works of the formative period, such as the *Muwaṭṭaʾ*, shows a different primary textual structure.[74]

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71. Miklos Muranyi, *Beiträge zur Geschichte der* Ḥadīth- *und Rechtsgelehrsamkeit der Mālikiyya in Nordafrika bis zum 5. JH. D. H.* (Wiesbaden: Harrassowitz Verlag, 1997).

72. The concept of sales is dealt with in many *kitāb*s within the *Mudawwana* such as *Kitāb al-Ājāl* (deferred sales), *Kitāb al-Buyūʿ al-fāsida* (spoiled sales) and *Kitāb Bayʿ al-gharar* (hazardous sales) to name just a few. For Lohlker's study, see Rüdiger Lohlker, *Der Handel im mālikitischen Recht: am Beispiel des k. al-buyūʿ im* Kitāb al-Muwaṭṭaʾ *des Mālik b. Anas und des* salam *aus der* Mudawwana al-kubrā *von Saḥnūn* (Berlin: Schwarz, 1991).

73. Lohlker, *Der Handel im mālikitischen Recht*, 131.

74. Lohlker's terminology is derived from the exposition on *Verfasser, Kompilatoren, Bearbeiter* and *Überlieferer* in a book review by Gregor Schoeler. Schoeler's specific comments concerning the issue of roles in

In 1993 Norman Calder published an analysis of some early writings of Muslim jurisprudence.[75] In addition to a section dealing with a short excerpt from the *Mudawwana*, Calder also examined the *Muwaṭṭaʾ* of Mālik, *Kitāb al-Umm* of Shāfiʿī, the *Mukhtaṣar* of Muzanī and *Kitāb al-Kharāj* of Abū Yūsuf. His relatively short publication, considering the number and influence of his texts of choice, created a type of watershed within the scholarly community concerning the development of early Muslim jurisprudence. Calder challenged the traditional dating which most scholars had up to that point accepted for the great works of the Mālikī *madhhab*. For Calder, following Schacht,[76] *ḥadīth* was generally a literature created in order to support particular religious or political positions. He believed that it arose out of the need to establish authority for a particular opinion, and as such was a literary development that is not found in the earliest decades of the formative period.[77] The *Muwaṭṭaʾ* is highly dependent on *ḥadīth* in establishing authority for the legal conclusions presented, whereas the *Mudawwana* uses, relatively speaking, much less *ḥadīth*. So Calder concluded that the *Muwaṭṭaʾ* must have succeeded rather than preceded, the *Mudawwana* in date. It was his opinion that due to the lack of focus on *ḥadīth* within the *Mudawwana*, it must have come earlier in legal development, that is closer than the *Muwaṭṭaʾ* to the time of Mālik. This was a break with traditional dating for these two texts. Calder came under much criticism by others

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authoring texts is found specifically on pages 124-126. Lohlker stated that by the strict definitions provided by Schoeler, that Saḥnūn should also be recognized as an author. His categories are similar, but not as detailed as Günther's which will be presented in section 4 beginning on page 82. Both Günther and Schoeler are attempting to create some standard terminology for the discipline to reduce confusion and misunderstandings. For Schoeler's original article, see Gregor Schoeler, review of *Quellenuntersuchungen zum Kitāb al-ʿIqd al-farīd des Andalusiers Ibn ʿAbdrabbih (246/860-328/940). Ein Beitrag zur arabischen Literaturgeschichte*, by Walter Werkmeister, *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 136 (1986), 118-28.

75. Calder, *Studies*.

76. J. Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), 80.

77. Libson sees the use of *ḥadīth* not only to establish authority, but also to attribute custom to *sunna* in order to give it greater authority or legitimacy. It is a parallel principle which he describes, "But certain traditions drew heavily on later customs, which legal authorities ascribed to the time of the Prophet—indeed, sometimes attributing the innovation in question to the Propeht himself—in order to accord them greater legitimacy and to incorporate the custom into the accepted legal framework." See Gideon Libson, "On the Development of Custom," *Islamic Law and Society* 4 (1997), 138.

for his position, however without the necessary proof to back up claims that the *Muwaṭṭaʾ* was an earlier text, it became difficult to refute Calder's assertions. One author described well the general atmosphere—felt amongst those deeply interested in early Ḥanafī and Shāfiʿī works, feeling their domain somewhat threatened by Calder's thesis—with the phrase "wishing him away."[78]

Following Calder's shift in dating of the early works of Mālikī jurisprudence, more interest arose in the contents of the *Mudawwana*. However the focus of attention was on specific topics within the text itself rather than a general understanding of either the origin or the framework of the whole text. One example of this is Camarero Castellano's article on the subject of agricultural calamities as addressed in the *Mudawwana*.[79] As with much early research on a formative text, Camarero Castellano was unable to make any firm conclusions, with most of her work being preliminary. With little other background into the text of the *Mudawwana*, these were the beginnings of understanding the depth and the breadth of the content of the work, being simply a sliver of the riches contained within. Camarero Castellano recommended further research be done in the area of calamaties from other medieval texts dealing with rural agricultural issues, in order to compare the content of the *Mudawwana* with contemporaneous, or near contemporaneous, texts.

Slavery, and more specifically the marriage of slaves, is the topic of a study by Cristina de la Puente from 1995.[80] As with so many of the other topical studies of the *Mudawwana*, the edition used is that of 1323/1905 published in Cairo. De la Puente explores

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78. See Christopher Melchert, "How Ḥanafism Came to Originate in Kufa and Traditionalism in Medina," *Islamic Law and Society* 6 (1999).

79. Inmaculada Camarero Castellano, "*Kitāb al-ŷawāʾiḥ*: Un capítulo de la *Mudawwana* sobre las calamidades agrícolas," *Boletín de la Asociación Española de Orientalistas* 37 (2001), 35-45.

80. Cristina de la Puente, "Esclavitud y matrimonio en 'al-Mudawwana al-kubrā' de Saḥnūn," *al-Qantara* 16 (1995), 309-33.

the topic of the marriage of slaves as described in the *Mudawwana*, highlighting unique

characteristics of the status of slaves within the Mālikī school. One example given is that in

the Mālikī school the slave is considered as being equal to a free minor, giving him the right

to own property, make decisions about his own marriage and pay a dowry.[81] De la Puente

concludes the study asserting that the *Mudawwana* demonstrates the social reality which

exists in the Muslim context of North Africa at the time of Saḥnūn. The greater context of the

Mudawwana itself, and the nature of the judgments which are in its pages, will need to be

better understood in order to make statements which reflect upon social reality. It would be

easy to assume a reality which did not quite exist in Saḥnūn's time especially if it is

understood that many, if not all, of the situations described in the *Mudawwana* are

hypothetical situations. As such, it is possible to use the *Mudawwana* as an understanding of

legal positions but not necessarily social realities.

In 1996 Yasin Dutton began to publish concerning the origins of the school of

Medina.[82] One main purpose of Dutton's work was to provide a better understanding of the

role of *ʿamal* in the Mālikī *madhhab* and in Islamic law in general. Giving definitions of not

only *ʿamal* but also *sunna* and *ḥadīth*, Dutton clarifies that *sunna* is seen as relating solely to

Muḥammad in his interpretations of the Qurʾān and his *ijtihād* resulting in new practices,

whereas *ʿamal* is a more developed factor as it includes the *ijtihād* of not only Muḥammad,

but also his successors and those after them. Dutton concludes that *ʿamal* always includes

sunna within it however not all *sunna* includes *ʿamal*, as some practice might be based

entirely on the actions and interpretations of Muḥammad. Other practices could be based on

the actions and interpretations of the successors as well. It is like a mathematical set and

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81. De la Puente, "Esclavitud y matrimonio," 333.

82. Yasin Dutton, "*ʿAmal* v *Ḥadīth* in Islamic Law: The Case of *sadl al-yadayn* (Holding One's Hands by One's Sides) When Doing the Prayer," *Islamic Law and Society* 3 (1996), 13-40.

subset, where *ʿamal* is a subset of *sunna*. He also provides a distinction between *ʿamal* and *ḥadīth* in his description of what later came to be known as Mālik's *madhhab*. This distinction is very important as it defines the actions of the people of Medina as being a further development from that of Muḥammad himself, being influenced by the opinions and interpretations of those that followed Muḥammad. So for Dutton, the *ʿamal* of the people of Medina is an expression of the preservation of the law.[83] The Mālikī *madhhab* relies not only on the traditions handed down concerning the opinions and interpretations of Muḥammad himself, but also, and even more significantly, the practice of the people of Medina as being understood to be a reflection of the actions, attitudes and interpretations of Muḥammad. What the people of Medina practiced, was understood to be a continuation of those things that Muḥammad practiced and encouraged. As a result, a reliance on the *ʿamal* of the people of Medina heavily influences the thoughts and ideas throughout the Mālikī *madhhab*, believing that reliance to have been the direction of Mālik himself.

Building on the work of Hakim, Akel Ismail Kahera began focusing on the development of building practices within the Mālikī *madhhab* first through his dissertation on the subject in 1997[84] followed by a text on the Islamic City in 2011.[85] Kahera's main emphasis in his writing has been on the impact that judicial judgments have on the practical outworkings of building in the medieval period. Beginning with a focus on the interplay of *ʿurf* and *fatāwā* (legal judgments), he has gone on to explore further the dimension of the power of the judicial element expressed through the issuing of legal decrees concerning building practices. Kahera's publication of a joint article along with Omar Benmira in 1998

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83. Dutton's larger work expands more on this idea. See Yasin Dutton, *The Origins of Islamic Law: The Qurʾān, the Muwaṭṭaʾ and Medinan ʿamal* (New Delhi: Lawman, 1999).

84. Akel Ismail Kahera, "Building, Dwelling & Reasoning: A Discourse on Mālikī Legal Practice & the 'Ordering' of Habitat in the Medieval Maghrib" (PhD diss., Princeton, 1997).

85. Akel Ismail Kahera, *Reading the Islamic City: Discursive Practices and Legal Judgment* (Lanham: Lexington Books, 2011).

demonstrates the growing interest in this subject area.[86] One other upcoming scholar

concerning this niche area is Eli Alshech, who zeros in on the nuances of privacy within the

development of building law in the formative and early classical periods of Mālikī law.

Having just published a few articles in the last decade, he has yet to establish himself as a

significant voice in this subject field.[87]

In the same year, 1997, Christopher Melchert published *The Formation of the Sunni

Schools of Law*: *9th -10th centuries C.E.*[88] His work aims to identify major contributing

factors in the formation of schools of law within Sunni Islam. Working from a practice of

clear definitions, Melchert sketches out the rise of schools forming first around particular

perspectives: a "*sunna* of the Prophet" arising in Basra, opposition rising in Kufa against

these ancient schools of law and an opposition in Medina formed by the "Traditionists" who

disliked human reasoning. Following on from this development, Melchert wrote an article on

the traditionist-jurisprudents, those who had a more formal dependence on *ḥadīth* and *isnād*

comparison rather than on *raʾy* (opinion). He discusses the titles *ahl al-ḥadīth* and *ahl al-

raʾy*, as well as the descriptors *aṣḥāb al-ḥadīth* and *aṣḥāb al-raʾy*, concluding that sometimes

raʾy was used in a positive sense and sometimes by an opposing group, pejoratively.

In 1997 Jonathan Brockopp also began work focusing on Mālikī *fiqh* and specifically

on Saḥnūn. His interest was initially expressed through several journal articles, each having

to do with different topics of jurisprudence within the Mālikī *madhhab*.[89] He published a

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86.   Akel I. Kahera and Omar Benmira, "Damages in Islamic Law: Maghribī Muftīs and the Built Environment (9th-15th Centuries C.E.)," *Islamic Law and Society* 5 (1998), 131-64.

87.   Eli Alshech, "'Do Not Enter Houses Other Than Your Own:' The Evolution of the Notion of a Private Domestic Sphere in Early Sunnī Islamic Thought," *Islamic Law and Society* 11 (2004), 291-332. Eli Alshech, "Out of Sight and Therefore Out of Mind: Early Sunnī Islamic Modesty Regulations and the Creation of Spheres of Privacy," *Journal of Near Eastern Studies* 66 (2007), 267-90.

88.   Melchert, *Formation*.

89.   Brockopp's foray into this field began with two extensive book reviews. The first was Jonathan E. Brockopp, "Rereading the History of Early Mālikī Jurisprudence," review of *Das "K. al-Wāḍiḥa" des ʿAbd al-Malik b. Ḥabīb: Edition und Kommentar zu Ms. Qarawiyyīn 809/40* (Abwāb al-Tahāra) by Beatrix Ossendorf-

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significant text centered on Ibn ʿAbd al-Ḥakam and his text, the *Mukhtaṣar*, in 2000.[90] His

interest has more recently been on the biographical dictionaries and specifically on the life of

Saḥnūn.[91] Brockopp appears to be picking-up on the research of Muranyi, attempting to move

research from North Arica forward. Some of his yet-to-be published works deal with the

subject of this research.[92]

Nejemeddine Hentati has been working on the formative period of the Mālikī

madhhab for many years. A native of Tunisia, his focus concerns the role of the ʿ*ulamaʾ* in

the formative period. Articles that he has published develop the role of the *qāḍī*, one entitled

"Mais le Cadi Tranche-t-il?" exploring through the analysis of a court judgment, arbitration

and transaction as to whether or not a *qāḍī* did in fact settle disputes.[93] Another article,

"L'*Iʿdhār*: Une Procédure Judiciaire dans le Droit Musulman" explains the meaning of

iʿdhār, a juridical procedure wherein an accused has an opportunity to object to an allegation

or an unjust judgment.[94] Most of Hentati's work seeks to better understand the roles and

procedures of the *qāḍī* specifically in the Māliki *madhhab.*

One final scholar who needs to be mentioned in this review of literature concerning

scholarly work related to the *Mudawwana* is Umar F. Abd-Allah Wymann-Landgraf.

Conrad, *Journal of the American Oriental Society* 118 (2) (1998), 233-38. Following this, he reviewed Muranyi's *Beiträge.* See Jonathan E. Brockopp, "Literary Genealogies from the Mosque-Library of Kairouan," a review of *Beiträge zur Geschichte der* Ḥadīth-*und Rechtsgelehrsamkeit der* Mālikiyya *in Nördafrika bis zum 5. Jh. d. H.*, by Miklos Muranyi, *Islamic Law and Society* 6 (3) (1999), 393-402.

90.   Jonathan E. Brockopp, *Early Mālikī Law: Ibn ʿAbd al-Ḥakam and his Major Compendium of Jurisprudence* (Leiden, Boston and Köln: Brill, 2000).

91.   Jonathan E. Brockopp, "Theorizing Charismatic Authority in Early Islamic Law," *Comparative Islamic Studies* 1 (2005), 129-58. See also Brockopp, "Contradictory Evidence."

92. See Jonathan Brockopp,"Curriculum Vitae," accessed 15 February, 2014, http://www.personal.psu.edu/ faculty/j/e/jeb38/resume.htm. Specifically note his "Work in Progress" section citing a book in progress entitled *The Charismatic Authority of the Muslim Scholar.*

93. Nejmeddine Hentati, "Mais Le Cadi Tranche-t-il?" *Islamic Law and Society* 14 (2) (2007), 180–203.

94. Nejmeddine Hentati, "L'*Iʿdhār*: Une Procédure Judiciaire Dans Le Droit Musulman," *Islamic Law and Society* 13 (3) (2006), 392–409.

Completing his PhD work in 1978 his dissertation was entitled "Malik's Concept of ʿAmal in the Light of Mālikī Legal Theory." After being revised, his disseration was recently published as *Mālik and Medina*: *Islamic Legal Reasoning in the Formative Period*.[95] Although clearly a significant contribution in this area, prior to his revisions his text was dated. His updates do not share the careful and accurate work he presented in the 1970s. He asserts that from 1905 until 2002 no new publications concerning the *Mudawwana* were undertaken which involved new manuscript evidence. Rather he stated that all editions between 1905 and 2002 were based either on the same original manuscript or simply on the modern edition published from that manuscript, hence refuting the earlier assertion of d'Emilia.[96] However, comparisons with at least two of the modern editions of the text from that time period present evidence which would not support this assertion.[97] The edition published in 2002 by Zāyid b. Sulṭān, according to Abd-Allah Wymann-Landgraf, was based on new manuscript evidence, however the publisher neglected to provide any details concerning these additional documents.[98] Abd-Allah Wymann-Landgraf identifies clear differences which exist between the 2002 edition under the direction of al-Sayyid ʿAlī al-Hāshimī and the first modern Cairo edition of 1323/1905. Based on the testimony of the editor, he believes these differences to be due to new manuscript evidence introduced in 2005. Yet, as will be demonstrated in this research, major discrepancies have existed between the 1323/1905 Cairo edition and subsequent editions as early as the 1324/1906 Cairo edition, in support of the unverified neglected claim of d'Emilia. Despite Abd-allah Wymann-Landgraf's unreliable detail concerning the formation of the *Mudawwana*, his text has been a valuable resource to the current research,

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95. Abd-Allah Wymann-Landgraf, *Mālik and Medina*.

96. See above page 17 for the explanation of this and note 29 on the same page for the reference.

97. See section 5.2.4.5 on page 150 for this comparison.

98. Abd-Allah Wymann-Landgraf cites a personal conversation with the editor of the text as the only available source of verification concerning new manuscript evidence. His personal frustration can be read into the lines of his description of the situation. See Abd-Allah Wymann-Landgraf, *Mālik and Medina*, 64n127.

presenting facts concerning the relationships between the modern editions of the *Mudawwana*.

It is the relationships between not only the modern editions, but also the medieval manuscripts of the text of the *Mudawwana* which have been tested and are presented here in the pages that follow. Additionally, the role and responsiblity of modern editors and medieval copyists in the formation of the modern concept of the *Mudawwana* is explored. How has the concept of the *Mudawwana*, if one can be defined, changed from the time of its inception to modern times? And how has this concept been formed? The 2002 edition and the ones before it, even with new manuscripts, all fall far short of providing what is needed today in order to understand the *Mudawwana* from a more critical perspective. It is hoped that this research can answer these questions and address these issues.

Chapter 2
The Historical Context of the *Mudawwana*

2.1. Time Period

The events which surround the genesis of the *Mudawwana* are significant to its creation. In order to better understand its context, a brief overview of the events of the time period prior to and during Saḥnūn's life will be presented. In addition, understanding the position and role of the senior judicial figure in the region is essential in perceiving the dynamics of the political and religious spheres during that time period. Following these general overviews, a more focused look will be made of the lives of Mālik, Ibn al-Qāsim and Saḥnūn.

By the time of Saḥnūn, the city of Kairouan was already at least 120 years old. As the administrative centre of the entire Muslim Maghrib region, it held an extremely significant position. Located there was the seat of the local governor (*wālī*) and also the state appointed judge (*qāḍī*). However, prior to the time of Saḥnūn, the city and the region experienced many turbulent times.

Founded in the year 50/670, Kairouan was established as a fortress city by the Arab armies expanding westward, jumping off first their base in Fusṭāṭ (just outside modern day Cairo), and then also Tripoli (modern day Tripoli, Libya).[99] Although a regional battle took place several years before in the region of Sufetula, it was not until the establishment of the city of Kairouan that the presence of the Arabic Islamic empire was firmly established in the region. Being distant from the central point of power, a regional authority, the *wālī*, was established early on in order to administer the territory. This individual held an extreme

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99. For the general history of Kairouan and the region, see M. Talbi, "al-Ḳayrawān," *Encyclopaedia of Islam, Second Edition* (Brill Online, 2010). This same article can be found in print form in M. Talbi, "Kairouan," in *Historic Cities of the Islamic World*, ed. C. Edmund Bosworth (Leiden and Boston: Brill, 2007). Also of great benefit for regional and political dynamics is M. Talbi, "L'Ifriqiya à l'Époque Aghlabide," in *Le Moyen-Age: (27-982 H. / 647-1574)*, ed. M. Masmoudi (Tunis: Sud Éditions, 2008).

amount of power, controlling the army, administration for the region, the judiciary and also the religious authority, not unusually leading the prayers. He was virtually autonomous from state intervention. During the Umayyad period, the *wālī* was usually chosen from those who had been manumitted by the Arabs, presumably increasing the likelihood of loyalty to those providing their freedom. Generally the *wālī* himself would have been protected by a personal guard also made up from the freed slaves (*mawālī*). Later, under the ʿAbbāsids, noblemen of Kairouan known as the Muhallabids[100] came to assume the role of *wālī* for about a quarter of a century—the period leading up to the time when Saḥnūn was born.

A significant shift took place in the governing of the region when Ibrāhīm b. al-Aghlāb was appointed as *amīr* (prince) of the region by Hārūn al-Rashīd, the caliph, in 184/800.[101] Greater autonomy was afforded to the Aghlabids by the central authority in Baghdad in exchange for a fixed annual tribute to the central treasury. This allowed for greater control within the region by the *amīr*, but also led to deeper conflict with the local inhabitants, with those of Kairouan often supporting insurgents in time of rebellion. Oftentimes revolt was motivated by the anger of the people over the abuse of power of the authorities. Judgments concerning their religious standing frequently influenced these relations and the *amīr* needed an ally to support him from within the ranks of the people. Sometimes this ally was found in the office of the *qāḍī*. This role, which carried out judicial rulings and made pronouncements for the permissibility of almost all actions and practices, became a useful partner for the political ruler, provided he complied. The appointment by the *amīr* of the *qāḍī* ensured that religious policy fell in line with political aspirations, sometimes

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100. in Arabic *al-Mahāliba*

101. For greater background to the rule of the Aghlabids, see G. Marçais and J. Schacht, "Aghlabids or Banu ʾl-Aghlab," *Encyclopaedia of Islam, Second Edition* (Brill Online, 2013).

providing just such an ally. However, a stiff-necked *qāḍī* potentially created a difficult scenario for governance.

Following a relatively difficult period in the relationship between the *amīr* and the people, an external enemy became the focus of conflict—Byzantine Sicily became the goal. Religious elements were positioned at the centre of this political thrust, not only in a platform for the war in the first place, but also through the appointment of the chief *qāḍī* of Kairouan, Asad b. al-Furāt,[102] as the leader of the army. Ibn al-Furāt was not to return to his post in Kairouan, as he died two years later (213/828) either from his wounds of the war or from the plague. These events helped to shape local attitudes and responses to the relationship between political and religious leadership during that time.

The Aghlabids, as mentioned briefly just above, enjoyed a high degree of autonomy. At the same time, their dependence on the ʿAbbāsid Empire can be evidenced in some of the most important religious symbolism regularly displayed before the people. The Grand Mosque, first built by ʿUqba b. Nafiʿ in 50/670 was rebuilt twice, once by Ḥassān b. al-Nuʿmān in 84/703, and then again in 155/772 by Yazīd b. Ḥātim. The most prominent location within the mosque, the *miḥrāb*, was decorated with carved marble and surrounded by squares of monochrome and polychrome metallic lustre ceramic tile. The marble rectangles are inscribed as being the work of an Andalusian craftsman, while the metallic lustre ceramic tile are the work of a craftsman from Baghdad, and are reminiscent of similar tile work in Samarra.[103] See below, figure 2 for an image of the ceramic tile and figure 3 for an image of the sculpted marble of the *miḥrāb*.

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102. Asad b. al-Furāt was chief *qāḍī* of al-Qayrawān in a joint role along with Abū Muḥriz under the appointment of Ziyādat Allāh in 203/818. See G. Marçais, "Asad b. al-Furāt," *Encyclopaedia of Islam, Second Edition* (Brill Online, 2012).

103. For a general description of the Grand Mosque, see Lucien Golvin, *Essai sur l'Architecture Religieuse Musulmane, Tome 3* (Paris: Éditions Klincksieck, 1974), 133-50. For a more detailed description of the decorative work in and around the *mihrab*, see Golvin, *Essai*, 223-50.

Figure 2. Polychrome metallic lustre ceramic tile from the area surrounding the *mihrab* in the Grand Mosque of Kairouan.

Figure 3. The *mihrab* of the Grand Mosque in Kairouan. Inset: detail of carved marble tile from the *mihrab*.

In 218/833, under Caliph al-Maʾmūn, the *miḥna* was initiated in the ʿAbbāsid empire requiring *qāḍī*s and all whose testimonies were to be acceptable in court, to ascribe to the belief in the created nature of the Qurʾān.[104] Having for some in the East devastating effects, the Aghlabids in Ifrīqiya were relatively untouched by this crisis until the rise to power of Abū Jaʿfar Aḥmad b. al-Aghlab in Kairouan in 231/846. Abū Jaʿfar instituted his own *miḥna*, pitting Saḥnūn against the Muʿtazilī *qāḍī* Ibn Abī ʾl-Jawād concerning the nature of the Qurʾān, created or uncreated. The *amīr* had Saḥnūn arrested and brought to trial and the *qāḍī*, Ibn Abī ʾl-Jawād, who was also the son-in-law of Asad b. al-Furāt, demanded his execution. Merely placed under house arrest, the tide turned in favour of Saḥnūn within a year, when the previous *amīr*, Muḥammad I, regained power and had Saḥnūn released. Retribution, at the hand of Saḥnūn, who obtained the title of *qāḍī* within two years, meant that Ibn Abī ʾl-Jawād died, succumbing to daily lashing in the courtyard of the Grand Mosque for not recanting his belief in the created Qurʾān.

When Saḥnūn assumed the role of *qāḍī* in Kairouan, the Aghlabids were still in power. Known for being a corrupt elite, they were not likely interested in furthering the interests of the jurists. Given their corruption, and Saḥnūn's penchant for elucidating piety, it is unlikely that a general interest in spreading his doctrines would have been tolerated under this regime. The standards put forth in the *Mudawwana* would merely have demonstrated the distant ethical position held by the governors.

The role of the *qāḍī* could be characterized at times as precarious, as poor relations or disagreement with the ruling *amīr* could easily lead to retribution.[105] Hentati ascribes a

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104. For more information on the *miḥna* see the extensive article by M. Hinds in "Miḥna," *Encyclopaedia of Islam, Second Edition* (Brill Online, 2014).

105. For a description of three different types of responses of jurists towards their ruling authority, see Nejemeddine Hentati, "Mālikī Jurists in the Medieval Muslim West Between Submission and Revolt" (Paper presented at the VII Islamic Legal Studies Conference, Ankara, Turkey, May 2012).

political role to the position of *qāḍī* given their judicial leadership as well as the influence they have in decisions made by the *amīr*. The relationship between the *amīr* and the *qāḍī* was mutually beneficial if both supported the other. The relationship could easily sour if either perceived antagonism by the other. Being politically inferior, the *qāḍī* would normally submit himself to the authority of the *amīr*. However, there are instances of *qāḍī*s refusing to submit to the authority of the *amīr*, and in some cases actually accusing the ruler of heresy. Saḥnūn himself experienced both the benefit and liability of his relationship with the ruler, as the change in rulers during the *miḥna* demonstrated one extreme and then the other.

With the help of Berber military might, the Aghlabids were overthrown and a new Fāṭimid dynasty began in Mahdia in 297/909.[106] The Fāṭimid adherence to Shīʿī thought put some of its beliefs into opposition with the Sunnīs of the Maghrib. The relationship between the jurists and the Fāṭimid caliphate fluctuated over the years, sometimes tolerant and other times demonstrating arrant aggression by the rulers. ʿAlī b. Muḥammad b. al-Walīd recorded the execution of a *muʾadhdhin*[107] of Kairouan in 307/919-20 for not having correctly pronounced the call to prayer, neglecting to include the usual Shīʿī phrase, "Come to the best of works." At another period, a rebellion in Kairouan begun by the Khārijī[108] Abū Yazīd in alliance with the Sunnīs there, further disrupted Fāṭimid rule, until put down by Fāṭimid caliph al-Manṣūr in 336/947. This rebellious outbreak prompted the move of the Fāṭimid capital from Mahdia to al-Manṣūriyya, just two kilometers south of Kairouan, known for its sumptuous palaces.[109] Fāṭimid extravagance, along with their geographical proximity to the

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106. For a lengthy treatment of the Fāṭimids, see M. Canard, "Fāṭimids," *Encyclopedia of Islam, Second Edition* (Brill Online, 2014).

107. the person responsible for making the oral call to prayer

108. The *Khārijites* were an early religious sect creating religious and political dissension and division, often leading to rebellion and insurrection. for more on *Khārijites*, see "Khārijites," *Encyclopedia of Islam, Second Edition* (Brill Online, 2012).

109. For more not only on al-Maṣuriyya, but also al-ʿAbbāsiyya of the Aghlabids, see Sylvie Denoix, "Founded Cities of the Arab World," in *The City in the Islamic World*, ed. Salma Khadra Jayyusi et al. (Leiden: Brill,

ʿulamaʾ of Kairouan at the time, likely did not endear them to the legal scholars. The relationship of the religious elite with the Fāṭimid rulers was likely never a stable matter.

When the Fāṭimids made a choice to move their capital to Egypt in 361/972, the region of the Maghrib was left in the hands of Ṣanhājī Berbers, beginning the Zīrid dynasty. For many decades there were good relationships between the two. The Zīrids broke away from the Fāṭimids in 443/1051 declaring allegiance to the ʿAbbāsids in Baghdad. This led to the reprisal of the Fāṭimids through the invasion of the Banū Hilāl. In 449/1057 the city of Kairouan was devastated by the invaders, never fully recovering. Political and military upheaval prevailed in the region until control was returned by the Almohad[110] dynasty based in Morocco.

With a better understanding of the political scene during the time of the genesis of the *Mudawwana*, a brief focus on the individuals themselves at the heart of the *Mudawwana* is warranted. Biographical information will be presented for Mālik b. Anas, Ibn al-Qāsim and Saḥnūn.

2.2. Personalities of the *Mudawwana*

2.2.1. Mālik b. Anas

Mālik b. Anas, whose full name was Abū ʿAbd Allāh Mālik b. Anas b. Mālik b. Abī ʿĀmir b. ʿAmr b. al-Ḥārith b. Ghaymān b. Khuthayn b. ʿAmr b. al-Ḥārith al-Aṣbaḥī (d. 179/796), was born near the end of the 1st/7th century, his actual date of birth being unknown. Much legendary material surrounds the biographical information available, although almost all sources rely on a now lost biography written by Ibn Saʿd (d. 230/845) which was based on al-Wāqidī (d. 207/822). What is recorded in later sources of his life

2008).

110. in Arabic *al-Muwaḥḥidūn*

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seems to fluctuate in terms of its reliability, further complicating an assessment of the sources. The fact that he studied *fiqh* with various teachers can hardly be in question, however the number of the *shuyūkh* under whom he sat is likely exaggerated[111] and can no longer be verified.

In addition to having studied under various teachers, Mālik himself became known as a great source of knowledge and tradition even within his lifetime. He is known to have had many disciples, along with a circle of colleagues. Some of the more well-known and influential members of Mālik's circle include Ibn Wahb (d. 197/813), Ashhab (d. 204/819), Ibn Mājishūn (d. 214/829), Ibn ʿAbd al-Ḥakam (d. 214/829), al-Muṭarrif (d. 220/835), al-Shaybānī (d. 187/803 or 189/805), al-Shāfiʿī (d. 204/820) and the most significant, for the purposes of this research, Ibn al-Qāsim (d. 191/806). Each of these personalities is featured in one way or another in the *Mudawwana*, either as a voice giving an opinion, or confirming something that is already being presented. So although Mālik himself is certainly one of the most significant personages of the *Mudawwana*, he is not the only one.

Mālik's death and burial in Medina occurred when he was approximately 85 years old, his funeral service being conducted by the local governor. In his lifetime he garnered the attention of a handful of *khulafāʾ* given his status as a teacher of jurisprudence and a transmitter of traditions.

The opinions of Mālik along with *ḥadīth* were the basis of his teachings, but foundational to these both were his observations and pronouncements concerning the *ʿamal* of the people of Medina. His most long-standing and well-known work is without doubt the *Muwaṭṭaʾ*, meaning literally smoothed path. Schacht's description of the *Muwaṭṭaʾ* can hardly

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111. According to Schacht, 900 teachers are mentioned in the sources for Mālik, with a list of 95 *shuyūkh* being given by al-Suyūṭī. See J. Schacht, "Mālik b. Anas," *Encyclopaedia of Islam, Second Edition* (Brill Online, 2013).

be improved upon: ". . . a survey of law and justice; ritual and practice of religion according to the *ijmāʿ* of Islam in Medina, according to the *sunna* usual in Medina; and to create a theoretical standard for matters which were not settled from the point of view of *ijmāʿ* and *sunna*." For Mālik, the *ʿamal* of the people of the Medina was either a confirmation of or a source in itself for his rulings. This is clearly demonstrated throughout the *Muwaṭṭaʾ*. The practice of the people of Medina is foundational within the Mālikī school as it is believed to have been based on the transmission of the practice of Muḥammad during his lifetime—the people of Medina continuing to behave in the same way which they witnessed Muḥammad himself doing. Thus they carried a living and active tradition which was lived out by the generations before them and passed on through behaviour and lifestyle. As a city Medina is also importatn as the capital of the early Islamic state was located here under the successors of Muḥammad.

Mālik figures significantly in the text of the *Mudawwana* as he is often recognized as the final authority on many matters.[112] However his voice is indirect—in the background. Sometimes he is quoted, both directly and indirectly, but the format of the text—question/answer—does not engage Mālik at all in the first person. Although he is noted as not having spoken about many of the issues discussed within the various *kitāb*s of the *Mudawwana*,[113] it is his opinions and his known sayings that are then used to project how he would have answered or responded to these issues. His name is invoked as an authoritative source. Of the three personages focused on here, Mālik, Ibn al-Qāsim and Saḥnūn, the relative frequency of their names would be an indicator of their perceived importance from the perspective of the

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112. The subject of Mālik and his representation of authority is found in section 6.3 entitled the Discussion of the Text beginning on page 193. For the part of the discussion specifically on authority in the text, see page 198.

113. Throughout the text, Ibn al-Qāsim is noted as saying, "I did not hear anything from Mālik about this," or something similar. At which point, he often gives his own opinion.

text. Mālik's name occurs a total of 18,731 times in the text of the *Mudawwana*.[114] Of the six volumes that this searchable text file is based on, Mālik's name occurs significantly more in the first of the six volumes.[115] A later comparison with the occurrences of the names of Ibn al-Qāsim and Saḥnūn will yield an interesting point. Although Mālik figures very prominently in the text, it appears that he was accredited with much more creative work than for which he was really responsible. Recent scholarship has recognized again that the *madhhab* named after him was really founded by those who came after Mālik, and not by Mālik himself.[116]

2.2.2. Ibn al-Qāsim

Relatively little is written in the way of biographical information concerning Ibn al-Qāsim, although due to the rather prolific work with which he is credited through not only the *Mudawwana*, but also the *Asadiyya*,[117] he is regarded as being the most reliable transmitter of Mālik's opinions.[118] According to Ibn Khallikān, Ibn al-Qāsim was born either in the year 128/745-46 or 133/750-51 and died in 191/806. He was buried in Cairo, close to the grave of another Mālikī *faqīh*, Ashhab.[119] Of note in his biography, in relation to his influence on the transmission of Mālikī doctrine, he was a friend or disciple (*ṣāḥib*) of Mālik for twenty years.

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114. Word searches of the *Mudawwana*, like any text, can be made on any digital word processing or text file. The 1323/1905 Cairo edition of the *Mudawwana* in a searchable text file can be downloaded off the web at <http://www.ahlalhdeeth.com/vb/showthread.php?s=2d5de6fa723064b5da599fabcd9b7b00&postid=83344">. I am grateful to Dr. Andrew Rippin for drawing this website to my attention.

115. Occurrences of Mālik's name in order of the six volumes of the 1323/1905 Cairo edition text are as follows: 3,744; 3,227; 2,398; 3,045; 3,088 and 3,229.

116. Yossef Rapoport says about this: "But, overall, in the generations that came after Mālik's death the real founders of the Mālikī school of law turned their eponym into an ideal authority, endowed with perfect legal knowledge and exceptional personal virtue."See Yossef Rapoport, "Mālik b. Anas (d. 179/795)," in *Islamic Legal Thought: A Compendium of Muslim Jurists*, ed. Oussama Arabi et al. (Leiden: Brill, 2013), 40.

117. More will be presented on the *Asadiyya* in the section to follow beginning on page 55.

118. J. Schacht, "Ibn al-Ḳāsim," *Encyclopaedia of Islam, Second Edition* (Brill Online, 2013).

119. Abū al-ʿAbbās Shams al-Dīn Aḥmad b. Muhammad b. Abī Bakr Ibn Khallikān, *Wafayāt al-aʿyān wa ānbāʾ abnāʾ al-zamān* (Beirut: Dār al-Thaqāfa, n.d.), 2:129. This Beirut edition of Ibn Khallikān lists the known biographical references for Ibn al-Qāsim, namely *Ṭabaqāt al-shīrāzī*, *al-Intiqāʾ*, *Tartīb al-mudārik*, *al-Dībāj al-madhhab*, *Tadhkirat al-ḥuffāẓ*, *ʿAbr al-dhahabī*, *Tahdhīb al-tahdhīb*, *Shadhurāt* and *Husn al-ḥāḍira*.

Ibn Khallikān's biography interestingly describes Ibn al-Qāsim as using this lengthy relationship to his advantage with Mālik's associates following Mālik's death, leaving a subtle implication that Ibn al-Qāsim may have manipulated himself into this role. Given the length of his tutelage under Mālik, it may have been simply a natural progression for Ibn al-Qāsim to assume the role of teacher once his mentor passed on. It may also be based partially on his age, as he seems to have been the oldest of Mālik's more well-known disciples. There is somewhat of a sense of great accomplishment in the life of Ibn al-Qāsim when one reflects on both his accomplishments and his family background. He is recognized as a crucial link for the transmission of Mālik's teaching to Saḥnūn, and then in turn to the entire Maghrib region and into Andalusia. This recognition is given despite his family having originated from within a tribe that had been manumitted (ʿataqa) through the hand of Muḥammad, who in turn gave his tribe the name al-ʿUtaqī (of the manumitted).

Although Ibn al-Qāsim is referred to in the *Mudawwana* exclusively in the third person, and most often quoted, either directly or indirectly (*qāla*), it is he who is set as the real power broker in the text. He is the decision maker, analyzer and analogical reasoner (*mujtahid*).[120] Yet, according to the testimony of the text of the *Mudawwana,* the fundamentals which he employs in his decision making come from the teaching that he has received from Mālik. Over and over again Ibn al-Qāsim refers to what Mālik has said publicly, what he taught and what Mālik said to him directly. Ibn al-Qāsim is the filter through which all of the teaching of Mālik is distilled, enabling him to recall, repeat and interpret what Mālik said. Ibn al-Qāsim becomes the authority of the authority as he knows more about what Mālik has taught, given the length of time he spent under Mālik's teaching.

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120. It is with care that this assertion is made, as the concept of a *mujtahid* may not have been present in Ibn al-Qāsim's day, and it is important to avoid anachronistic pronouncements. However, with the ability to do word searches on the text of the *Mudawwana*, it is possible to demonstrate that the word *ijtihād* does indeed occur in the text, in fact, it is found even in the text of *Kitāb al-Qisma al-awwal*. See, e.g., the text based on the 1323/1905 Cairo edition, Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 4:480:3.

Given this background, Ibn al-Qāsim becomes the key link bridging the knowledge gap between Saḥnūn and Mālik, enabling Mālikī ideas to be transplanted in the Maghrib.

Ibn al-Qāsim's name occurs 1,989 times in the text of the *Mudawwana*. The frequency of occurrences though, is not consistent throughout the six volumes analyzed. There is a significantly higher occurrence of his name in the first volume than there is in any of the other five volumes: 883 times as compared with 296, 190, 230, 223 and 167 times. As with the frequency of Mālik's name, the question forms: What is the need for such a relatively high frequency of their names in the first portion of the text? A quick look at the *kitāb*s found in the first of the six volumes reveals that the subject matter dealt with in this part of the text involves fundamental aspects of religious expression: purity, prayer, *ḥajj*, fasting, *zakāt*, burial practices, *jihād*, sacrifices and vows, to name many of them— *ʿibādāt*.[121] Could the need for authoritative names, moreso than in other parts of the text, be greater here in order to establish these fundamentals with the mark of authority? As Mālik and Ibn al-Qāsim are the authoritative voices of the *Mudawwana*, representing what became known later as Mālikī teaching, it is no surprise that their names would occur with a significantly greater frequency in the section of the text that deals with the most fundamental guidelines in the practical outworking of religious practice.

2.2.3. Saḥnūn

2.2.3.1. Saḥnūn's reputation

The life of Saḥnūn[122] (d. 240/854), is surrounded by some mystery. In addition to the difficulty that this time period has with the source material, much of the literature that speaks of the life of Saḥnūn is replete with accolades. One vivid saying describes the following trail

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121. For more on this subject see the discussion concerning the order of the *kitāb*s in the commentaries below on page 104.

122. For his full name see page 5.

of statesmen-jurists: "I saw in a dream the Prophet (God's blessings and peace be upon him)

walking on a road and Abū Bakr was behind him, and ʿUmar was behind Abū Bakr, and

Mālik was behind ʿUmar, and Saḥnūn was behind Mālik."[123] As Saḥnūn is known historically

as emphasizing the practice of the people of Medina and their transmission through practice

of the sunna of the Prophet Muḥammad, it is not too surprising to find this saying also in the

same source: "I saw the Prophet (God's blessings and peace be upon him) entombed, and the

people were putting dirt on the grave, and Saḥnūn was exhuming him. And he [the transmitter

of this story] said, 'He said to Saḥnūn, "They are burying the *sunna* of the messenger of God

(God's blessings and peace be upon him) and you are keeping it alive." ' "[124] This tribute has

extended to the modern day, with Saḥnūn being described as "the greatest jurist of Medieval

Ifrīqiya."[125] Brockopp has written about the apparent contradiction that exists in the sources

concerning the life of Saḥnūn which he attributes to the later popularity of the *Mudawwana*

and the need to give him and his text the legitimacy they deserve.[126] Brockopp has also

recently published a brief biography of Saḥnūn along with multiple short translated sections

from the *Mudawwana*.[127] Although not attempting to provide a thorough analysis of any or all

of the primary sources relating to the biographical data of Saḥnūn, it is important to have a

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123. ʿIyāḍ b. Mūsā, *Tartīb al-madārik*, 87.

124. ʿIyāḍ b. Mūsā, *Tartīb al-madārik*, 86.

125. Mohamed Talbi, "Law and Economy in Ifrīqiya (Tunisia) in the Third Islamic Century: Agriculture and the Role of Slaves in the Country's Economy," in *The Islamic Middle East, 700-1900: Studies in Economic and Social History*, ed. A. L. Udovitch (Princeton, NJ: Darwin Press, 1981), 209.

126. Brockopp, "Contradictory Evidence." Citing conflicting reports within al-Qāḍī ʿIyāḍ's text, Brockopp classifies the textual data into two categories: narrative accounts—entries which are found in the biographical dictionaries—and transmission records—these would be the sources that are cited by Saḥnūn in the texts which he is responsible for transmitting. Classifying them in this way, he maintains that the content of each is of a different value. What is transmitted in the dictionaries is intentionally included in order to elaborate on the lives of those described, believed by him to be a stretching of, or possibly even complete fabrication of, the truth. Brockopp argues the transmission records would be more reliable, as the information is embedded within the text of another document and the motivation for its inclusion would not be related to the reputation of the one being mentioned.

127. Jonathan E. Brockopp, "Saḥnūn b. Saʿīd (d. 240/854)," in *Islamic Legal Thought: A Compendium of Muslim Jurists*, ed, by Oussama Arabi et al. (Leiden: Brill, 2013), 65-84.

general understanding of the context of some of the sources available, as well as their content, in order to better understand the context of Saḥnūn's writing.

2.2.3.2. Primary sources on the life of Saḥnūn

Two primary sources have been consulted concerning the biography of Saḥnūn. The first is considered to be more reliable than the second due to its earlier date and is recorded in one of the earliest biographical dictionaries of the religious scholars of Ifrīqiya. *Ṭabaqāt ʿulamāʾ Ifrīqiya* was written by Muḥammad b. Tamīm b. Tahmām al-Tamīmī (d. 333/945),[128] better known as Abū ʾl-ʿArab. Born within two decades of the death of Saḥnūn, and being a student and later teacher of *fiqh*, it is reasonable to believe he would have been quite familiar with the stories of the life of Saḥnūn. Having died in 333/945, his biographical work sits within one century of this subject.[129] Although Abū ʾl-ʿArab's ancestors were from a great Arab family which, prior to the rule of the Aghlabids, had some political power in the region of Tunis, Abū ʾl-ʿArab himself was more focused on literary and religious pursuits. He is known to have participated in the revolt of Abū Yazīd against the Fāṭimids, which entered Kairouan in 333/945,[130] resulting in his imprisonment and soon after, his death.[131]

The second biographical source, much more enriched, and possibly more unreliable as a result of its much later date, was written by al-Qāḍī ʿIyāḍ (d. 544/1149-50), a historian, biographer, and, clearly from his title, a religious scholar and judge. His work, entitled *Tartīb al-madārik wa taqrīb al-masālik,* is a biography of the religious scholars of the Mālikī

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128. Abū ʾl-ʿArab and al-Khushanī, *Ṭabaqāt.*

129. Ch. Pellat, "Abū ʾl-ʿArab," *Encyclopaedia of Islam, Second Edition* (Brill Online, 2013).

130. S.M. Stern, "Abū Yazīd Makhlad b. Kaydād al-Nukkārī," *Encyclopaedia of Islam, Second Edition* (Brill Online, 2013).

131. Ch. Pellat, "Abū ʾl-ʿArab."

madhhab. Al-Qāḍī ʿIyāḍ was born in 476/1083 in Ceuta, a tiny part of modern Spain on the continent of Africa located at the straits of Gibraltar. He was appointed as a *qāḍī* first in Ceuta, followed by Granada and then Marrakesh. Although apparent from this brief detail, it should be pointed out that al-Qāḍī ʿIyāḍ lived both geographically and temporally very distant from Saḥnūn. He was very familiar with Saḥnūn's office, being a *qāḍī* himself, although the politics of al-Qāḍī ʿIyāḍ's world were quite different from that of Saḥnūn's. Much had transpired in those three centuries which separated their lives, not the least of which is the shift in status likely achieved by the *Mudawwana* in that period of time.

Born to a family not yet well-known in Ifrīqiya, Saḥnūn's date of birth has not been accurately recorded. Al-Qāḍī ʿIyāḍ, claiming no discrepancy amongst the sources, says that he died on the 8th of *Rajab* 240/the 2nd of December 854.[132] Noted to have lived a life of 80 years, al-Qāḍī ʿIyāḍ goes on to conclude that Saḥnūn was born in the year 160/776-77. Details which might convince a reader of its veracity, al-Qāḍī ʿIyāḍ describes the funeral prayers given for Saḥnūn conducted by the *amīr* himself, Muḥammad b. al-Aghlab. Saḥnūn's son, Muḥammad, rejected the shroud which the *amīr* personally sent, and gave that away as charity. The men of the *amīr* refused to participate in the prayers for his death, saying to him, "You have learned what was between him and us," as they had accused each other of being apostates. Most of these men were members of the theological grouping known as the Muʿtazila, and they had no intention of having the population believe that they were now

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132. ʿIyāḍ b. Mūsā, *Tartīb al-madārik*, 85. Abū ʾl-ʿArab, the earliest known biography of Saḥnūn, apparently disagrees that the sources have no discrepancy, placing the date of his death one day earlier on 7 *Rajab* 240/1 December 854. See Abū ʾl-ʿArab and al-Khushanī, *Ṭabaqāt*, 102.

reconciled and satisfied with Saḥnūn.[133] Thus al-Qāḍī ʿIyāḍ concludes the description of

Saḥnūn's life with a sense of the on-going controversy with which he lived.[134]

Given, as Brockopp notes, that al-Qāḍī ʿIyāḍ's narrative of the life of Saḥnūn is

compiled two centuries following the earliest biography of Saḥnūn, and corresponds to about

one century following the compilation the *Mudawwana* in its final form,[135] much of what

al-Qāḍī ʿIyāḍ writes about Saḥnūn may reflect hagiography more than biography. Many

historical works mentioned in the sources are now lost. Quotes from those works allow some

piecing together of non-existent texts, Yet the amount of source material with which medieval

biographers had to work was much different than it is now. Only speculation can produce

what is no longer available. So al-Qāḍī ʿIyāḍ's biography of Saḥnūn must be read with extra

caution. With that approach, it is possible to tease out of his work ideas which underlie his

thoughts, focusing not on the veracity of the claims he makes, but rather trying to understand

the need to include those particular statements in the biography of a man dead for about three

hundred years.[136] In this way, the historical records will produce a clearer understanding of

the times in which al-Qāḍī ʿIyāḍ, and others like him, wrote.

2.2.3.3. Saḥnūn's *riḥla* and the *Asadiyya*

Born in Ifrīqiya to a family with roots in Syria (*al-Shām*), Abū ʾl-ʿArab describes

Saḥnūn as being a pure Arab (*min ṣalībat al-ʿarab*,[137] a phrase which Lane considers

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133. See the discussion above on page 44 concerning the *miḥna* and the significance of the Muʿtazila in relationship with Saḥnūn in that crisis.

134. ʿIyāḍ b. Mūsā, *Tartīb al-madārik*, 85.

135. Muranyi's work on Saḥnūn and the *Mudawwana*, Muranyi, *Die Rechtsbücher*, which is the most complete review to date, states that the organization of the sections and chapter titles remains relatively unchanged since the time of al-Qābisī (d. 403/1012). See Muranyi, *Die Rechtsbücher*, x.

136. See above note 16 on page 10 for an example of how al-Qāḍī ʿIyāḍ's works can serve historical purposes.

137. Abū ʾl-ʿArab and al-Khushanī, *Ṭabaqāt*, 101.

Maghribian Arabic used to describe someone descended from the family of the Prophet).[138]

His father had been in the military from the region of Ḥomṣ. He was known as a collector or compiler of *fiqh*. Saḥnūn was schooled while young. His interest in legal matters led to a desire to make an educational trip (*riḥla*) eastward, a common project for would-be scholars of his day. Abū ʾl-ʿArab uses a curious phrase to describe the work which Saḥnūn had compiled which seems to indicate, already at that date, a preference of some for his work over that of someone else. He says, "The body [of *fiqh* work] which he compiled is a sincere friend in comparison with what another has compiled."[139] After this follows a brief series of phrases which extol Saḥnūn's work and his character, words such as skillful, pious, righteous, ascetic and simple in terms of worldly affairs—dress, food and travel.[140] Abū ʾl-ʿArab then goes on to relate some of his other qualities as expressed through his actions, giving some details concerning his *riḥla*, his dates of working as *qāḍī*, as well as his age. According to the text, he became *qāḍī* in the year 234/848-9 at the age of 74, and kept that position until his death six years later. Abū ʾl-ʿArab notes that Saḥnūn did not take any earnings for his work as *qāḍī*. This could suggest that Saḥnūn did not believe in providing religious duties for pay, or that he was not in any financial need, or that the state did not have the resources to pay him. This last reason seems the most unlikely as the sources would not support an interpretation which suggests that the Aghlabid empire was in a state of financial insolvency. Concerning

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138. E.W. Lane, *An Arabic-English Lexicon* (London: Williams and Norgate, 1874), I:1713.

139. Abū ʾl-ʿArab and al-Khushanī, *Ṭabaqāt*, 101.

140. Talbi, in his entry on Saḥnūn in *EI2* translates this as, "In him there were qualities," wrote Abu ʾl-ʿArab, "which were not to be found combined in any other: perfect knowledge of the law (*fiqh*), sincere piety, rigour in the application of justice, contempt for temporal things, simple tastes in food and clothing, generosity and refusal to accept anything from princes." This is also quoted in French in his article on Kairouan and Mālikī Spain. See M. Talbi, "Kairouan et le malikisme espagnol," in *Études d'Orientalisme: Dédiées a la Mémoire de Lévi-Provençal, Tome I* (Paris: G.-P. Maisonneuve et Larose, 1962), 328.

his own wealth, at that period of his life, al-Qāḍī ʿIyāḍ reports a saying of al-Anbarī that Saḥnūn was making 500 dinars a year on olives.[141]

Whether or not Saḥnūn received any compensation for his work as *qāḍī*, it could be asked why the biographer would want to include such a detail. The most obvious answer that seems to appear is that Saḥnūn's life is an example of piety demonstrated without the desire for worldly gain. But this is precisely how Abū ʾl-ʿArab describes Saḥnūn from the outset, making it plain that his jurisprudence was "skillful and pious" and that in regards to affairs of the world, he was an ascetic.[142] Abū ʾl-ʿArab is clear from the beginning of his entry on Saḥnūn that his reputation was seen in very high regard, even at this relatively short span after his life.

The literature indicates a desire on Saḥnūn's part to seek out the correction or revision to the work of Asad b. al-Furāt, known as the *Asadiyya*. The jurisprudential competition between Ibn al-Furāt and Saḥnūn may be interpreted considering what is written in the sources of their works, and their own lives. The lack of substantial data surrounding both Saḥnūn and Ibn al-Furāt as well as their works, leaves many questions about their lives and times as yet unanswered. The political and religious events surrounding their lives, the perceived competition between different religious schools of thought, and the outcome of their scholastic achievement make it necessary to understand the impact of the life of Ibn al-Furāt on Saḥnūn.

Asad b. al-Furāt was born in 142/759 or 145/762 in either Ḥarrān or Ifrīqiya, the sources are contradictory,[143] with one even saying that his family originates from Khurasan

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141. ʿIyāḍ b. Mūsā, *Tartīb al-madārik*, 80.

142. Abū ʾl-ʿArab and al-Khushanī, *Ṭabaqāt*, 101.

143. Jonathan E. Brockopp, "Asad b. al-Furāt," *Encyclopaedia of Islam, Three* (Brill Online, 2013).

and Nishapur.[144] He traveled to the East in order to study *fiqh* and is said to have received the *Muwaṭṭaʾ* from Mālik (d. 179/795) in Medina. He also studied under al-Shaybānī (d. 189/805) and Abū Yūsuf (d. 182/798) in Iraq and Ibn al-Qāsim (d. 191/806) in Egypt.[145] Following his time spent in Egypt under Ibn al-Qāsim, Ibn al-Furāt came out with his presumed work, the *Asadiyya*, which was apparently a text resolving questions he had following his time in Irāq. It is understood that he wrote this text as a result of his consultations with Ibn al-Qāsim following his trip to Irāq.

The details concerning the beginning of Saḥnūn's pursuit of Mālikī thought revolve around the controversy of Ibn al-Furāt's text. It is said in the biographical dictionaries that Saḥnūn made his *riḥla* east in order to correct the *Asadiyya* with Ibn al-Qāsim, after having received a copy of it from Ibn al-Furāt.[146] It is presumably a text based on Ḥanafī thought that was also influenced by the Mālikī thought of Ibn al-Qāsim, or simply as a Ḥanafī/Mālikī syncretism.[147] The reason for Saḥnūn's trip east is given only in one of the later biographies of Saḥnūn, rather than in that of Abū ʾl-ʿArab.[148] This unique report with a late mention of Saḥnūn's travel motivation has led Brockopp to suggest that the report may not be accurate. Although being reported by only a later biographer does not necessarily make the report untrue, it does raise questions as to why the reason was not mentioned earlier. As travelling east was a normal event for those interested in pursuing *fiqh* for the purpose of studying with whom they considered teachers, whether that be in Egypt, Medina or Iraq, Saḥnūn's trip was

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144. Abū ʾl-ʿArab and al-Khushanī, *Ṭabaqāt*, 81.

145. Abū ʾl-ʿArab and al-Khushanī, *Ṭabaqāt*, 3:291.

146. Brockopp, "Asad b. al-Furāt," *EI3* states that the work was supposedly 60 volumes in length, but that it was only first mentioned by al-Shīrāzī (d. 476/1083), as noted by Muranyi. It is mentioned in Mālikī works by Ibn Abī Zayd al-Qayrawānī (d. 386/996), which seems rather significant, yet it is still approximately 200 years following the time when it was supposedly written.

147. Talbi, "Saḥnūn" *EI2*.

148. al-Mālikī, *Riyāḍ al-nufūs*, 261. Ibn Khallikān, much later, also comments on the reason for Saḥnūn's trip east. See Ibn Khallikān, *Wafayāt al-aʿyān*, 181.

not out of the ordinary. It is possible that he had a desire to correct legal perspectives represented by the Ḥanafī school in Ifrīqiya along with a general desire to study in the East. That it should be reported 250-300 years later in one biography that the purpose of his trip was to question the work of one of the main proponents for a rival school of thought in jurisprudence begins to appear as a religiously politicized agenda, revising historical perspectives. Muranyi interprets the evidence of handwritten additions to manuscripts in the Arab librarires of North Africa as confirming the rivalry between the *Asadiyya* and the *Mudawwana* and demonstrating a shift in content between the two works.[149] The evidence supports that the *Mudawwana* and the *Asadiyya* were separate and different texts, although both dealing with similar questions of a legal nature.[150]

Although it is clear from this distant temporal position that there was some form of struggle between the Ḥanafī and Mālikī schools in Kairouan, recent research confirms a desire on Saḥnūn's part to not dominate Ḥanafī jurists when he took control as *qāḍī*, rather he requested their help in the area of jurisprudence.[151]

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149. Note here Muranyi's clear presentation of a marginal gloss from ms Qarwiyyīn 799 found within *kitāb al-nikāḥ* of the *Mudawwana* demonstrating a shift in doctrinal thought between the (no longer accessible) *Asadiyya* and the *Mudawwana*. Muranyi has championed the revision of the idea supported by both Schacht and Sezgin that somehow included within the *Mudawwana* at the end of the text is the *Asadiyya*, under the title of the *Mukhtaliṭa*. It is much clearer now at this juncture in the origins of the texts to realize that Saḥnūn began his discussions with Ibn al-Qāsim on the basis of the information provided by the *Asadiyya*, but that he did not include Ibn al-Furāt's text within his own. It has taken more than thirty years for research to correct this mistaken conclusion. However it is still unclear what the relationship is exactly between the *Mudawwana* and the *Mukhtaliṭa*. It appears that even in the second half of the third century, according to the findings of Muranyi in the Qarawiyyin library in Fes, there was not a clear distinction of material that belonged in the *Mudawwana* and what belonged to the *Mukhtaliṭa*. A copy of *kitāb al-ḥajj al-awwal* is labeled as being *min Mukhtaliṭat al-Mudawwana*. This belongs to the collection cited by Muranyi as 800. Additionally, the modern Abu Dhabi edition includes *Mukhtaliṭa* in its title.

150. Muranyi, in his text, identifies three fragments from the mosque library in al-Qayrawān, two fragments mentioning the *riwāya* of Asad b. Furāt (*sic*) and two separate *kitāb*s: *Kitāb al-ʿItq waʾl-tadbīr* and *Kitāb al-Sariqa wa-qaṭʿ al-tarīq*. These provide the clear proof that there in fact was some known text (and teaching) of Ibn al-Furāt which differed from that of Saḥnūn and the *Mudawwana*. Exactly when and how they came to be known as the *Asadiyya* though, is another matter. Other references refer to the *kutub* of Asad b. al-Furāt. Ibn Khallikān, four hundred years after the time of Saḥnūn and Ibn al-Furāt, used both terms, the *Asadiyya* and "his" books, referring to Ibn al-Furāt's books, in his recounting. See Ibn Khallikān, *Wafayāt al-aʿyān*, 181-82.

151. Miklos Muranyi, "Muḥammad b. Saḥnūn waʾl-Ḥanafiyya min khilāl *Kitāb al-Siyar al-kabīr* lil-Shaybānī wa-Kitāb al-Jihād min *Kitāb al-Nawādir waʾl-ziyādāt* li-Ibn Abī Zayd al-Qayrawānī," *Ishāmāt al-Qayrawān al-ʿilmiyya waʾl-taqniyya: Nadwa duwaliyya yawmī 24-25 Afrīl 2009 bi-markaz al-dirāsiyya al-Islāmiyya biʾl-*

The further sources are removed from the time of the original events, the more complex the situation becomes, both in terms of the intrigue which takes place, and the interpretation of those recorded events. Ibn Khallikān, in his rendering of the rivalry between Ibn al-Furāt and Saḥnūn, narrates that Ibn al-Qāsim instructed Ibn al-Furāt to verify his work against the "correct" version held by Saḥnūn. Additionally he puts words in Ibn al-Qāsim's mouth wishing that no one would benefit from the person and work of Ibn al-Furāt. These words would very easily be placed in his mouth centuries after Ibn al-Qāsim's death based on the eventual triumph of the Mālikī *madhhab* over the Ḥanafī.

Qayrawān (Tunis: Markaz al-dirāsāt al-Islāmiyya biʾl-Qayrawān 2011), 62. Muranyi concludes that the similarities in texts between Shaybānī and Ibn Abī Zayd al-Qayrawānī confirm what Hentati has understood about the relationship between the Mālikī and Ḥanafī *madhāhib* during the time of Saḥnūn and Ibn Saḥnūn. Muranyi references Hentati's text, *Tibr al-Zamān*, Tunis, 2004.

Chapter 3
Sources: Manuscripts and Commentaries

This chapter will describe the known ancient manuscripts of the *Mudawwana*, and give a fuller description of the sources which have been consulted throughout this research. Many of the known ancient manuscripts are in fragmentary form. Observations relevant to the research will be made of each of these sources. As well, commentaries which have been consulted, both modern publications as well as manuscripts, will be included in this overview. Those manuscripts which are a significant part of this research will be identified.

3.1. The Known Ancient Manuscripts of the *Mudawwana*

In the case of manuscripts, it is only a small portion of the *Mudawwana* which is usually still preserved. This comparison is made in reference to the size of the *Mudawwana* in terms of the content as we know it from the modern editions. There are lengthy manuscripts of the *Mudawwana* extant, but in relative terms, the majority of manuscript witnesses are fragmentary.

With Saḥnūn himself coming from the region of the Maghrib, and his students studying there and disseminating his work within the region, as one should expect, the script in the manuscripts being examined exhibits attributes common of Maghribī script.[152] Later figures in the research will display various manuscript folios. In order to read the script properly, it would be important to note the following observations concerning the script employed. The letter *fāʾ* is written with one subscript dot, whereas the letter *qāf* is written with one superscript dot. The letter *dhāl* and *dāl* are identical with no superscript dot above

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152. For a fuller discussion of the characteristic features of Maghribī script, see Adam Gacek, *Arabic Manuscripts: A Vademecum for Readers* (Leiden: Brill, 2009), 147-50 and N. van den Boogert, "Some Notes on Maghribi Script," *Manuscripts of the Middle East* 4 (1989), 30-43. Van den Boogert's article, although a good reference for Maghribī script, uses forms particular to a specific geographic area. Forms will change somewhat depending on the region from which the text comes as well as the hand of the individual copyist. Any guide to a particular Arabic script should be seen as a guide only with variation likely.

the *dhāl*. Additionally, the foot or body of the *dhāl* or *dāl*, when it occurs in the final position, seems to resemble the *rāʾ* or *zāʾ*, becoming more of a descender rather than being the body of the letter. The *ʿayn* and *ghayn* have a wide opening when occurring in the initial position. The descender of the *mīm* in the final position is not consistently formed, sometimes curving to the right and sometimes to the left. The stem of the *ṭāʾ* and *ẓāʾ* is not vertical, but rather slanted, the downward stroke coming down from the right to connect with the body of the letterform on the usual left side. The *yāʾ* in the final position is written with the descender sweeping back towards the right, running parallel with the baseline, normally under the baseline but sometimes on it, raising up the position of the previous letter or even two. An initial *yāʾ* is not consistently pointed, likewise the *tāʾ*, sometimes creating confusion between the two. A final *alif*, not including an *alif maqṣūra*, has a tail of sorts which falls below the baseline, slanted to the left, prior to raising the stem upward in a vertical fashion. The *alif maqṣūra*, on the other hand, resembles a final *nūn*, but of course, without the superscript dot and thus not like the *yāʾ* which may well be undotted most of the time. The letter *hāʾ* is not completely sealed together when it appears in the initial and medial positions. The letters *jīm* and *khāʾ* are not consistently pointed, thus context is very important in determining which letter is which especially when they are of the dotted variety. These observations are some of the unique characteristics of the Maghribī script employed in the manuscripts observed of the *Mudawwana*.

Each fragment, regardless of its size, exhibits some type of organization of the text, whether that be simply lined text, sections divided by subject headings, a *kitāb* of text or more than one *kitāb* grouped together. Each *kitāb* deals with one main subject matter, the title of the *kitāb* being indicative of the contents. In manuscript form, when one (or more) *kitāb*(s) is(are) bound in some manner, separated from other *kitāb*s or groups of *kitāb*s, it will be

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referred to as a *kurrāsa*. This signifies a group of sheets of parchment which were compacted together in some form to create a separate whole.

3.1.1. Garrett 900H

This manuscript is housed at the Princeton University Library and is described in Hitti's catalog of the Arabic collection of manuscripts.[153] The author is listed as Ibn al-Qāsim. There are 126 folios which measure 25.6 cm by 19.6 cm while the written surface is 18.5 cm by 13 cm. There are 20 lines per page, written in Maghribī script on vellum. Hitti records that the contents of this manuscript contain *Kitāb al-Ṣiyām wa ʾl-iʿtikāf*, *Kitāb al-Ḥudūd fī ʾl-qadhf* and *Kitāb al-ʿItq*. Note that without examining the manuscript, it would be difficult to determine whether or not each of these *kitāb*s is complete. A comparison by simply the number of pages in total for the three *kitāb*s in the 1323/1905 Cairo edition (164) and the number of folios in the manuscript (126) indicates that it is likely that all three of these *kitāb*s are complete, in the sense of containing similar to all of the material which would be in correspondence with this modern edition.[154] Muranyi indicates that there is no notation of a scribe, a date or any marginal notes.[155]

3.1.2. Alexandria *al-Baladiyya* 1210b

In Sezgin's source, *Fihris al-makhṭūṭāt*, the entry for this manuscript lists the title as being: "Questions and their answers according to Imām Mālik."[156] The entry in the *Fihris* just

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153. See Philip K. Hitti, Nabih Amin Faris, and Buṭrus ʿAbd-al-Malik, *Descriptive Catalog of the Garrett Collection of Arabic Manuscripts in the Princeton University Library* (Princeton: Princeton University Press, 1938), 546. Sezgin identifies this as Garrett 1834. See Sezgin, *GAS*, I, 469.

154. The 1323/1905 Cairo edition has these three *kitāb*s from Garrett 900H in five separate divisions, not three. They are, along with their number of pages in the 1323/1905 Cairo edition, *Kitāb al-Ṣiyām* [5] 35; *Kitāb al-Iʿtikāf* [6] 16; *Kitāb al-Ḥudūd fī ʾl-qadhf* [95] 33; *Kitāb al-ʿItq al-awwal* [36] 48; and *Kitāb al-ʿItq al-thāni* [37] 32. Recall that the contents of the square brackets refer to the line numbers upon which these *kitāb*s are found in Appendix B. This comparison is supported based on similar comparisons between the numbers of printed pages in the 1323/1905 Cairo edition relative to the number of folios for the same material found in BL ms Or 6586 which has been consulted for this research.

155. Muranyi, *Die Rechtsbücher*, xii.

156. For Sezgin see *GAS*, *I*: 469. For *Fihris al-makhṭūṭāt* see Fuʾād Sayyid, *Fihris al-makhṭūṭāt al-muṣawwara*,

before this one was specifically for *al-Mudawwana* so the work was obviously known by the editor but it may not have been apparent from the state of the manuscript that this was from the same general work. However the description is appropriate for the material. This manuscript is said to have been written in the sixth century in the Naskhī style, rather than Maghribī. There are 66 folios measuring 27 cm by 18 cm in size. Otherwise, there is no further information about the content of the manuscript. Other than the mention of Mālik in the title, no indication is given of any other individual responsible for authorship, writing or transmission.

3.1.3. Leuven ms Lefort B1, B2, B3, B4 and B5

Purchased in the markets of Cairo, these pages of a manuscript were gifted by Prof. L. Th. Lefort, hence the name of the manuscripts, in March 1923, and are now located in the University library in Leuven (Löwen) in Belgium.[157] Following Heffening, Sezgin lists these simply as "*Stücke einer Hds. von* al-Mudawwana."[158] A description of this manuscript, 27 folios on parchment, was written in 1937 by Heffening, along with a description of other texts.[159] According to handwriting analysis as well as handwriting materials, Heffening has dated the manuscript to the 4th-5th/10th-11th century supported by the statement that parchment was rarely used after the 5th/11th century, this statement later being refuted by Muranyi given new findings concerning the use of parchment in Ifrīqiya and al-Andalus.[160] Divided into five different parts, each one appears to be an assortment of pages from the *Mudawwana* with no sense of continuity whatsoever, like cards dealt out in a card game. The

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I (1954), 281 as cited in Sezgin.

157. This collection was described above on page 22 in the literature review concerning Heffening's article in 1937.

158. See Sezgin, *GAS*, *I*, 469.

159. Heffening, "Islamischen Handschriften."

160. Muranyi, *Die Rechtsbücher*, xivn10.

folios of groups B2, B3, B4 and B5 are all noted to have two holes in the margins which Heffening speculates are used, along with some form of string, to be a binding agent for the *kurrāsa*.[161] Heffening's greatest contribution to the study of the *Mudawwana* in this description is the comparative analysis he makes of the manuscript portions he had access to along with the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition.[162] The length of his article belies its significance as Heffening uses the few marginal notations to demonstrate what he refers to as the "*heillos verworrene*" situation of the *Mudawwana*, simply two hundred years after its authorship.[163] His conclusion, he also claims, supports the description of the *Mudawwana* according to al-Qāḍī ʿIyāḍ as related by Ibn Khallikān, which he interprets as a collection of poorly ordered questions and answers, without subject headings, which he edited, a job which he was unable to finish.[164] Heffening's study will be referred to further on page 132 in section 5.2.4 entitled Content Discrepancies within the Textual Content. His study has been an important piece of evidence upon which this research has built further.

3.1.4. Fes Qarawiyyīn 577

A brief description of this manuscript was published by al-ʿĀbid al-Fāsī in 1959.[165] Al-Fāsī notes that it is written on parchment (*al-raqq*) and contains several parts (*ajzāʾ*). He dates the earliest of the parts (*juzʾ*) to 494/1100-01. Muranyi does not mention this manuscript in his foreword by this identifier at all. Given the size and description of the

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161. See Heffening, "Islamischen Handschriften," 87-88.

162. Further discussion of Heffening's contribution concerning the comparative analysis of the 1323/1905 Cairo edition and 1324/1906-07 Cairo edition of the *Mudawwana* will follow in the modern edition section. See below section 5.2.4.2 on page 132.

163. Heffening, "Islamischen Handschriften," 96.

164. Ibn Khallikān, *Wafayāt al-aʿyān*, 3:180-182.

165. Al-ʿĀbid al-Fāsī, "al-Makhṭūṭāt al-ʿarabiyya fīʾl-ʿālam: khizānat al-Qarawiyyīn wa-nawādirihā," *Revue de l'Institut des Manuscrits Arabes; Majalla maʿhad li-makhṭūṭāt al-ʿarabiyya* 5 (1959), 12.

manuscript, this appears to be the same document that Muranyi labels as Fes Qarawiyyīn 574 and will be assumed as such for the sake of this research. Muranyi provides an excellent description of this manuscript in his publication on the *Mudawwana*.[166] Each part (*juzʾ*) of the text has on average 25-30 folios in it. Muranyi describes the names and order of the different sections of the text, but not the books (*kitāb*s) within the sections. These sections appear to act in the same role as modern volumes. This is the only known collection, partial or otherwise, where sections of the *Mudawwana* are given named titles of some sort. What is interesting in this manuscript, which Muranyi notes, is that there is a recording in the text of the order of the different sections of the text. These sections are, according to Muranyi, as follows:

> *Rizmat al-Sharāʾiʿ* - from *Kitāb al-Wuḍūʾ* to *Kitāb al-Nudhūr*
> *Rizmat al-Nikāḥ* - to *Kitāb al-Īlāʾ waʾl-liʿān*
> *Rizmat al-ʿAbīd* - from *Kitāb al-ʿItq* to *Kitāb al-Walāʾ waʾl-mawārīth*
> *Rizmat al-Buyūʿ* - to *Kitāb al-Ṣulḥ*
> *Rizmat al-Ijāra* - from *Kitāb al-Ijāra* to *Kitāb Taḍmīn al-ṣunnāʿ*

The recording of this arrangement is most interesting for two reasons. First, the date of this arrangement is the earliest known recording of any form or order or organization for the text. The second reason is that the arrangement listed here, which can be as early as 494/1100-01, does not agree in full with the arrangement of the *kitāb*s as they appeared in the 1323/1905 Cairo edition or any subsequent publication. Although not all the *kitāb*s are listed in this recording, the names of the *kitāb*s given provide some clue as to the ordering of the *kitāb*s themselves. The order of the *kitāb*s of the *Mudawwana* is a major issue which will be dealt with more fully in chapter four.

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166. Muranyi, *Die Rechtsbücher*, xi.

3.1.5. British Library ms Or 6586

The BL ms Or 6586 presents fragments of the *Mudawwana* which are grouped together into five sections under separate title pages, one now missing. Ellis observed and recorded these numbers when he wrote his *Descriptive List* of the British Library holdings.[167] Ellis describes "books 20, 37, 40 and 50." What Ellis refers to as "books" are clearly *kurrāsa*s consisting of various *kitāb*s of the main text. For the purposes of this research and to avoid any confusion in terminology, what Ellis refers to as books will be identified as *kurrāsa*s. *Kurrāsa*s are present in other manuscript collections of the *Mudawwana*, and the ones found here share characteristics which allow them to be defined as one or more *kitāb*s of the *Mudawwana* which are held together as a separate whole. They have their own individual title page, but are named only according to the *kitāb*(s) found within them, with many being described as being *min al-Mudawwana*. Each of these *kurrāsa*s contains *kitāb*s within it, namely and respectively: *Kitāb al-Īlāʾ* (section 20, complete[168]), *Kitāb al-Jawāʾiḥ, Kitāb al-Musāqāh, Kitāb al-Luqaṭa*, and *Kitāb al-Ābiq* (section 37, all being incomplete), *Kitāb al-Sharika* (section 40, incomplete), *Kitāb al-Wadīʿa, waʾl-ʿĀriyya, waʾl-Hibāt* (section 50, all incomplete) and *Kitāb al-Murābaḥa* (incomplete), *Kitāb al-Wakālāt* (complete) and *Kitāb Taḍmīn al-ṣunnāʿ* (complete).[169]

Each folio measures approximately 28.4 cm by 19.5 cm and they are generally consecutive within their respective sections. They must have been stored together and were most likely bound with string as individual *kurrāsa*s. Holes punched in the inside margins

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167. A.G. Ellis and Edward Edwards, *A Descriptive List of the Arabic Manuscripts Acquired by the Trustees of the British Museum Since 1894* (London: British Museum, 1912), 26.

168. In regards to being "complete" or "incomplete", individual *kitāb*s were compared with the text in the modern editions (1323/1905 Cairo edition and the 1324/1906-07 Cairo edition) and their completeness is in relation to those forms of the text.

169. A lengthy discussion concerning the inconsistency of specific *kitāb*s grouped together within *kurrāsa*s will follow in the section dealing with structural discrepancies of the text. For the section on *kitāb*s and *kurrāsa*s, see specifically section 5.1.1 on page 92.

support this supposition.[170] This allowed for many of the folios to remain in the order they did, providing excellent continuity of the text.[171] Containing only a few marginal notes, according to Muranyi, one folio includes a correction notice of the copyist "*min al-umm*."[172] Each section within the manuscript has a title page for the *kitāb*s within that section. For example, the *kurrāsa* Ellis identifies as book 50, its reference number written directly on the title page of the *kurrāsa*, says in the upper right corner, "*al-m*[---] *khamsīn min al-Mudawwana*." Then centered on the page it reads, "*Kitāb al-Wadīʿa waʾl-ʿĀriyya waʾl-Hibāt min al-Mudawwana riwāyat Saḥnūn b. Saʿīd al-Tanūkhī ʿan ʿAbd al-Raḥmān b. al-Qāsim al-ʿUtaqī ʿan Mālik b. Anas al-Aṣbaḥī.*" This manuscript is referenced several times throughout the course of this research.

3.1.6. British Library ms Or 9810

This collection of folios is made up of five groups, labelled A through E. Groups A and B have 132 and 57 folios respectively, while groups C, D and E have only 19, 17 and 20 folios each. According to Muranyi, there are only a few marginal notes, and there is a generally formulated source, "*wa-qad qāla baʿḍu ʾl-tūnisiyyīna wa-baʿḍu ʿaṣḥabī-nā.*"[173] Undated as a group, as each part seems to be from a different date, parts C and E though, have dating evidence. A fragment of *Kitāb al-Nikāḥ* coming from Kairouan was copied in the year 381/991 with two addenda coming at the end of the section (*juzʾ*). It is these addenda which testify to its origin from Kairouan. Part E, which has 20 folios, provides a complete

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170. Heffening theorizes on the meaning of the dual holes in the inside margin of the manuscripts in Leuven, assuming them to be holes which support a binding keeping the *kurrāsa* intact as one separate whole. See above page 65 note 161.

171. The ordering of the *kurrāsa*s in comparison with the modern editions will be discussed further in section 5.1.1 on page 79.

172. Muranyi cites this marginal notation as being on folio 75a of BL ms Or 6586. See Muranyi, *Die Rechtsbücher*, xii.

173. See BL ms Or 9810A:45a.

copy of *Kitāb al-Nudhūr* which was produced in the year 394/1003 based on a model of his teacher, Abū ʾl-Hasan al-Dabbāj, that would have dated as early as 344/955.

3.1.7. Kariouan 400/1010

Nothing is known about this manuscript, save the reference which is provided by Sezgin.[174] As it is privately owned, unless some sort of information is provided in the future by its owner, it is unlikely to provide the scholarly world with any value.

3.1.8. Kairouan 258/871-72

Sezgin lists this manuscript fragment as consisting of eight folios.[175] It is difficult to try to determine exactly to which folios these might be referring. Since the time of Sezgin's *GAS*, Muranyi has spent many years in the Mosque library of Kairouan. Throughout those years, according to his publications, he has seen literally hundreds of fragments from the *Mudawwana*. Although many of his observations are recorded in his text on Saḥnūn's *Mudawwana*, the fragments and folios that he has studied and photographed have not themselves been published. He has chosen, rather, to focus simply on publishing significant findings such as colophons and addenda, but not the text itself. As a result, folios, shelf markings and *kurrāsa* numbers are not provided for any of his sources in Kairouan. It is possible that the collection is so disorganized that no shelf or accession numbers exist. The manuscript simply appears as "Hs Qairawān."[176] The only times Muranyi uses full references is when he is referring to published manuscripts. This will make further research, with his work as a foundation, more difficult. One can only assume that these eight folios to which

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174. Sezgin, *GAS*, I, 469.

175. Sezgin, *GAS, I*, 469.

176. Muranyi, *Die Rechtsbücher*, 38.

Sezgin refers, are included in the folios, fragments and collections Muranyi has seen in his years in Kairouan.

3.1.9. Fes Qarawiyyīn 319

The only information supplied by Sezgin is "I, 4th or 5th century H."[177] No other information on this manuscript is available.

3.1.10. Fes Qarawiyyīn 796

According to the entry by al-ʿĀbid al-Fāsī, this manuscript is a huge book written on gazelle skin with the use of a small stick (*siwāk*). It is, presumably, one of the few lengthy or complete copies of the *Mudawwana*, in relation to the modern editions. Located in the Qarawiyyīn mosque library in Fes, it attests to have been copied by ʿAbd Allāh b. Muḥammad b. ʿAbd al-Wārith. As the 1323/1905 Cairo edition of the *Mudawwana* is credited to a different copyist, see above page 15, this is apparently another extensive copy of the *Mudawwana*. The date for the copying of this manuscript is unknown. It was not available for the purposes of this research.

3.1.11. Fes Qarawiyyīn 1335

According to Schacht, this manuscript contains two booklets of two quires each, on parchment.[178] The first is dated from 517/1123-24 and contains the 24th *juzʾ* of the second half of the work. The contents range from *Kitāb al-ʿĀriyya* to *Kitāb Ḥarīm al-Ābār*, however the *kurrāsa* itself says that it ends at the conclusion of *Kitāb Iḥyāʾ al-mawāt*.[179] The second

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177. Sezgin, *GAS*, I, 469.

178. J. Schacht, "Sur quelques manuscrits de la bibliothèque de la Mosquée d'Al-Qarawiyyīn à Fès," in *Études d'Orientalisme: Dédiées a la Mémoire de Lévi-Provençal, Tome I* (Paris: G.-P. Maisonneuve et Larose, 1962), 273.

179. As this *kitāb* is unknown from other sources for the *Mudawwana* one could speculate that it is either a lost *kitāb*, or possibly part of the contents of the *Mukhtaliṭa* which seem to sometimes appear alongside *kitāb*s of the *Mudawwana* in manuscript form.

booklet contains *Kitāb al-Qaṭʿ fiʾl-sariqa*[180] and *Kitāb al-Muḥāribīn* (or *al-ḥirāba*).[181] The owner of the manuscript, at the time of its creation, is listed as Mūsā b. Muḥammad b. Saʿāda.[182]

3.1.12. Rabāṭ Kattanī 343

This manuscript contains 55 folios of unknown content, from the 4th/10th century.[183] It was not available for the purposes of this research.

3.1.13. Chester Beatty Library mss Ar 3006 and 4835

Although listed as two separate manuscript numbers, the majority of the folios from these two different accession numbers are from the same copyist hand. As they were acquired at different times they were given different numbers, keeping folios which originally belonged together in the same manuscript apart from each other. Both of these manuscripts are used extensively throughout this research.

3.1.13.1. Ar 3006

These disorganized vellum fragments number 143 folios measuring 25.5-28 cm by 19.5-20.3 cm.[184] They are written in Maghribī script with the copyist named—Yūsuf b. ʿAbd al-Jabbār b. ʿAmr al-ʿAbdarī, the colophon clearly indicating his name and the year of the

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180. In the 1905 modern edition, *Kitāb al-Muḥāribīn* follows directly after *Kitāb al-Sariqa*, therefore it seems reasonable to assume that what Qarawiyyīn 1335 refers to as *Kitāb al-Qaṭʿ fī l-sariqa* and *Kitāb al-Sariqa* are referring to the same general content, however neither of the modern editions refer to this *kitāb* by that name. This relates directly to the discussion of the titles of the various *kitāb*s and when they were set for the various manuscript traditions that obviously arose.

181. Note the additional variant title of this *kitāb*, according to Schacht. Where he obtained this other title is not explained. Presumably it's source is somewhere else in the text.

182. Schacht's note is that naming the owner of the manuscript for whom it was copied in the title of the manuscript was a common practice in ancient Maghrib manuscripts.

183. Sezgin, *GAS*, I, 469.

184. Arberry, A.J., *The Chester Beatty Library: A Handlist of the Arabic Manuscripts, Volume I, Mss. 3001 to 3250* (Dublin: Emery Walker, 1955), 2.

copy.[185] One of the *kitāb*s is dated to Rabīʿ II 509/August 1115.[186] According to Muranyi,

these only have one interesting marginal note of Andalusian origin.[187] Yet for the purposes of

this research, much can be gleaned from this source. Like the other manuscript of the Chester

Beatty Library, the pages are not in correct order. This manuscript was purchased by Chester

Beatty in Cairo from A. S. Yahuda in two parts, one in March 1928 and the other in March

1929, which would explain some of the disorganization in the manuscript.[188] Six *kurrāsa* title

pages are found in this manuscript from the following *kitāb*s: *Kitāb Ummahāt al-awlād,*[189]

Kitāb Kirāʾ al-dūr waʾl-araḍīn,[190] *Kitāb al-Aymān biʾl-ṭalāq,*[191] *Kitāb al-Salam al-thānī,*[192]

Kitāb al-Shufʿa,[193] and *Kitāb al-ʿItq al-thānī.*[194] These title pages have very unique and

uniform layouts. Presentations of the titles of the *kitāb*s will be discussed below in section

5.3.3 on page 170.

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185. For more on typical contents of colophons in Arabic manuscripts see Rosemarie Quiring-Zoche, "The Colophon in Arabic Manuscripts: A Phenomenon without a Name," *Journal of Islamic Manuscripts* 4 (2013), 49-81.

186. The *kitāb* which mentions the date is *Kitāb al-ʿItq al-thānī*. The copyist writes: "*fī Rabīʿ al-ākhir ʿalā tisʿa wa khamsa mīʾa ʿalā yad Yūsuf b. ʿAbd al-Jabbār b. ʿAmar b. al-ʿAbdārī*." This is noted on the digital copy of the folio provided by Chester Beatty Library. In the absence of folio numbers written on the individual folios of this particular manuscript, jpeg image files as forwarded by the CBL will be cited in their stead. See Chester Beatty Library ms Ar 3006, digital image reel_222-030.jpg.

187. Muranyi, *Die Rechtsbücher*, xii.

188. Elaine Wright, "Visitor Query on CBL Website," Personal communication to the author (2013).

189. digital image reel_222-004.jpg

190. digital image reel_222-011.jpg

191. digital image reel_222-033.jpg

192. digital image reel_222-058.jpg

193. digital image reel_222-072.jpg

194. digital image reel_222-081.jpg

3.1.13.2. Ar 4835

Further purchases were made by Chester Beatty on 14 July 1936 in Cairo from A. Sarkissian resulting in this addition to the library's holdings of the *Mudawwana*.[195] Although under a different accession number, many of these folios belong to the same original manuscript, as they have been copied by the same individual and one page provides a date from just a year following that of CBL ms Ar 3006.[196] An average size folio measures 25.4 cm by 19.8 cm. There is one title page amongst its folios, the *kurrāsa* containing more than one *kitāb*, namely *Kitāb al-Mudabbar waʾl-walāʾ waʾl-mawārīth waʾl-ansāb*.[197] Subject headings in this copy of the *Mudawwana*, like many others, are written in a larger size handwriting, taking up two lines of the page, justified in the center of the page and indented from the main text at both margins of the folio.

Due to the dishevelled nature of the manuscript under this accession number, it is clear that some folios from a different original manuscript became mixed up with what was originally from a manuscript of the *Mudawwana*. The majority of the folios in this manuscript, 53 out of a total of 72 folios, have 20 lines per page and are used extensively in this study. Their content provides evidence that they are indeed from *kitāb*s known to be part of the *Mudawwana*. Not all the folios in this collection belong either to the same copy of the *Mudawwana*, nor were they from the same hand. Of the remaining 19 folios, 17 of them have 22 lines per page[198] and two of them have 19 lines per page,[199] each set seeming to be written

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195. Wright, "Visitor Query."

196. folio 72a

197. folio 1a

198. folios 6, 7, 50 and 67-70

199. folios 44 and 45- Extensive word searching of samples from the two folios which have only 19 lines of text have not been successful in determining a location from the general text of the 1323/1905 Cairo edition of the *Mudawwana*, yet the language of the folios is consistent with the type of language found in the text of the modern edition. It is possible that they contain commentary from the *Mudawwana*, but their content cannot be verified as none of the commentaries accessed indicate any correspondence with this text.

by a different hand. Although these mismatched folios are written by another hand, a closer inspection of the ones with 22 lines per page can establish that the text contains subject matter found in the *Mudawwana*. For example, when inspecting folio 50a, which has 22 lines per page as opposed to the usual 20 lines in this manuscript, it can be determined that the first line of this folio actually comes from *Kitāb al-Diyāt*, the last *kitāb* in all of the modern editions of the *Mudawwana*. It corresponds with both the 1323/1905 Cairo edition and the Beirut edition.[200] Another folio has text found in *Kitāb al-Ḥajj al-thānī*.[201] These folios provide evidence that at some point, folios from different *kitāb*s and even different scribes, came to be found together, resulting in an unorganized collection. It is possible, therefore, that there is more than one copy of the text of the *Mudawwana* that is incorporated together in this collection, or that more than one copyist was used in writing different *kitāb*s of the text as the copyist style is very different. If one manuscript became mixed up with another manuscript, it could have happened as late as the twentieth century. Manuscript evidence must be checked carefully to ensure that all folios belong to the same *kitāb*, scribe and even original ancient writing.

The CBL manuscripts have a total of seven title pages amongst its folios.[202] Of these seven, only one title page lists more than one *kitāb* as its contents.[203] This *kurrāsa* contains *Kitāb al-Mudabbar wa ʾl-walāʾ wa ʾl-mawārīth wa ʾl-ansāb*.

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200. It is interesting to observe that there is a discrepancy with the text in this folio of the CBL ms Ar 4835 and the text of both the 1323/1905 Cairo edition and Beirut edition. The unusual folio states, from the very top line, *wa ʾl-sāriq idhā waqaʿa wa-ghayr al-sāriq siwā yaḍmanu*. The 1323/1905 Cairo edition reads, *al-sāriq wa-ghayr al-sāriq idhā waqaʿa fīhi siwāʾ yaḍmanuhu*. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 6:454:20. The Beirut edition reveals yet one other reading, being, *idhā waqaʿa al-sāriq aw ghayr al-sāriq siwāʾ yaḍmanuhu*. Compare Saḥnūn, *Mudawwana* Beirut, 4:672:26. Unless further manuscripts can be found for this specific *kitāb*, one can only speculate as to which version, if any of these, was the original intended text.

201. folio 68

202. Six of the seven title pages in these manuscripts appear in CBL ms Ar 3006 as mentioned above on page 72.

203. CBL ms Ar 4835:1a. For an image of this title page, see page 98.

3.1.14. Azhar *Fiqh* Mālikī 1742

Noted by Sezgin, this manuscript exists in five volumes (*Bänden*) and is almost a complete manuscript of the *Mudawwana* in relation to the modern editions.[204] It contains the equivalent of parts II - XVI of the 16 volume set published in Cairo in 1323/1905. Parts of it were written in the year 527/1132-33. This manuscript has not been accessible for the purposes of this research.

3.1.15. Leiden ms Or 14.038

Consisting of four folios on vellum, measuring 21.5-28.5 cm by 13.5-19.0 cm, they are dated to the 4th-5th/10th-11th centuries. According to the notes provided by Witkam, these folios contain text from *Kitāb al-Istibrāʾ*.[205] Most folios contain some marginal notations which appear to have been written by the same copyist.

3.1.16. Known Inaccessible Manuscripts

In addition to the manuscripts noted above, it must again be mentioned that there are numerous fragments of the *Mudawwana* located in Kairouan, Rabat and Fes according to Muranyi.[206] As none of these manuscripts have been published, and multiple attempts to access fragments in Kairouan have not been successful, sadly no further information on these fragments can be provided.

3.2. Commentaries

Five commentaries concerning the *Mudawwana* have been consulted for comparative purposes with the order of the *kitāb*s. These have been written at various times after the

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204. Sezgin, *GAS*, I, 469. For the original reference, see *Fihris al-kutub al-mawjūda biʾl-maktaba al-Azhariyya* (Cairo: Maṭbaʿat al-Azhar, 1365), II:405.

205. J.J. Witkam, *Catalogue of Arabic Manuscripts in the Library of the University of Leiden and Other Collections in the Netherlands* (Leiden: Brill, 1982), 65.

206. See page 30 above in the review of scholarly literature concerning Muranyi's work.

circulation of the *Mudawwana*, one as early as within 200 years of the death of Saḥnūn, with the furthest from his life being almost 400 years later. The commentaries give a perspective on how the text of the *Mudawwana* was perceived and explained by the scholars in the centuries after its genesis. These include, in chronological order beginning with the oldest, *al-Tahdhīb fī ikhtiṣār al-Mudawwana* by al-Barādhiʿī (Abū Saʿīd Abū ʾl-Qāsim Muḥammad al-Azdī al-Qayrawānī, d. 438/1046-47), *al-Muqaddimāt al-mumahhidāt*[207] by Ibn Rushd (Abū ʾl-Walīd Muḥammad b. Aḥmad d. 520/1126), *al-Tanbīhāt al-mustanbaṭa ʿalā ʾl-kutub al-Mudawwana wa ʾl-Mukhtaliṭa* by al-Qāḍī ʿIyāḍ (ʿIyāḍ b. Musā, d. 544/1149), *Manāhij al-taḥṣīl wa-natāʾij laṭāʾif al-taʾwīl fī sharḥ al-Mudawwana wa-ḥall mushkilātihā* by al-Rajrājī (Abūʾl-Ḥasan ʿAlī b. Saʿīd, d. 633/1235) and *Kitāb sharḥ gharīb alfāẓ al-Mudawwana* by al-Jubbī (c. 4th-5th/10th-11th century). These are, by no means, the only commentaries that were written on the *Mudawwana*. These particular commentaries have all been published in the last thirty years, and are somewhat readily available to the general reader.

Of the five commentaries, only that of al-Jubbī appears from its table of contents not to be comprehensive, the number of *kitāb*s being dealt with being many fewer than the other commentaries. Appendix C provides a comparison of the *kitāb*s found in each of these five commentaries along with the order of *kitāb*s from the 1323/1905 Cairo edition. As the order of *kitāb*s in the commentaries varies quite significantly in comparison to the variances of the order of the *kitāb*s in the modern editions of the *Mudawwana*, no attempt has been made in Appendix C to try to create correspondence in the orders of the *kitāb*s between the commentaries as was done in Appendix B for the orders of the *kitāb*s in the modern editions. As noted in Appendix C, the number of *kitāb*s discussed in each commentary is as follows: al-Barādhiʿī 87, Ibn Rushd 80, al-Qāḍī ʿIyāḍ 76, al-Rajrājī 81 and al-Jubbī 56.

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207. The full title for this commentary was given above on page 16.

3.2.1. al-Barādhiʿī: *al-Tahdhīb fī ikhtiṣār al-Mudawwana*

Writing within two hundred years of the death of Saḥnūn (d. 240/854), and likely at

least one hundred years prior to that of al-Qāḍī ʿIyāḍ, al-Barādhiʿī's commentary is of special

interest. In his studies and biography of al-Barādhiʿī, introducing the commentary, Ibn al-

Shaykh places his birth between that of Ibn Abī Zayd al-Qayrawānī (d. 386/996) and al-

Labīdī (d. 440/1048-49) as al-Qāḍī ʿIyāḍ places him in the eighth generation of scholars of

Ifrīqiya. Little is known specifically of al-Barādhiʿī's life other than that he was from

Kairouan and within the scholarly community, a colleague of al-Labīdī and a student of Ibn

Abī Zayd. Biographers deduce a strong religious scholarly background from his writings and

context. His *nisba*, al-Barādhiʿī, indicates family roots from Azerbaijan, according to al-

Shaykh as taken from *Lisān al-ʿArab*.[208]

3.2.2. Ibn Rushd: *al-Muqaddimāt al-mumahhidāt*

Note that the author of this work is Ibn Rushd, "the grandfather" (*al-jadd*), of the

more famous grandson by the same name. The grandson is better known by his Latinized

name Averroes. In addition to *al-Muqaddimāt al-mumahhidāt*, the Andalusian Abū ʾl-Walīd

Ibn Rushd wrote additional commentaries on Mālikī works, one other being the commentary

Kitāb al-Bayān waʾl-taḥṣīl li-mā fī ʾl-Mustakhraja on the work of al-ʿUtbī (d. 255/869), often

referred to as the *ʿUtbiyya*, after its accredited author.[209]

Ibn Rushd is rightly known as one of the greatest Mālikī jurists of all time.[210] Living

two hundred years after the time of Saḥnūn, Ibn Rushd took some of the primary source

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208. See Abū Saʿīd Abū ʾl-Qāsim Muḥammad al-Azdī al-Qayrawānī al-Barādhiʿī, *al-Tahdhīb fī ikhtiṣār al-Mudawwana* (Dubai: Dār al-Buḥūth lil-Dirāsāt al-Islāmiyya wa-Iḥyāʾ al-Turāth, 2002), 92.

209. Muḥammad b. Aḥmad Ibn Rushd, *al-Bayān waʾl-taḥṣīl waʾl-sharḥ waʾl-tawjīh waʾl-taʿlīl fī masāʾil al-Mustakhrajah* (Beirut: Dār al-gharb al-Islāmī, 1984).

210. An excellent review of Ibn Rushd's life and works can be found in Delfina Serrano Ruano, "Ibn Rushd al-Jadd (d. 520/1126)," in *Islamic Legal Thought: A Compendium of Muslim Jurists*, ed, by Oussama Arabi et al. (Leiden: Brill, 2013), 295-322.

material of the Mālikī *madhhab*, namely the *Mudawwana* and the ʿ*Utbiyya*, and applied the

science of the principles of Islamic law (i.e. *uṣūl al-fiqh*) to these works, in order to clarify

contradictions, correct discrepancies and errors, and essentially organize the foundations of

Mālikī law. *Al-Muqaddimāt al-mumahhidāt* related to the *Mudawwana* and *al-Bāyan* related

to the ʿ*Utbiyya*. They were likely used in tandem depending on the particular source to which

one was referring. Ibn Rushd introduces his commentary with fundamentals of religion and

law as well as discussing different forms of reasoning. The highly developed methodology

applied in his work, not only in these commentaries, but also his *fatāwā*, led to the high

regard in which he was held by the generations which followed him.

3.2.3. al-Qāḍī ʿIyāḍ: *al-Tanbīhāt al-mustanbaṭa*

Interest in al-Qāḍī ʿIyāḍ's commentary rests in his significant role in recording

the history of Mālikī scholars through his biographical dictionary *Tartīb al-madārik wa-*

taqrīb al-masālik bi-maʿrifat aʿlām madhhab Mālik.[211] Talbi states that this text is "the best

defence for and illustration of the Mālikī school."[212] This work of al-Qāḍī ʿIyāḍ's was the first

major biographical dictionary of the Mālikī school. He was the *qāḍī* of Ceuta for two separate

periods during the first half of the 6th/12th century. Details concerning the end of his life are

unknown. Following his involvement in open rebellion against the Almohads he was exiled

to Marrakesh where he died.

Very little work has been done in the West on any of his works other than his

biographical dictionary mentioned above.[213] In his commentary, al-Qāḍī ʿIyāḍ provides

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211. ʿIyāḍ b. Mūsā, *Tartīb al-madārik.*

212. See M. Talbi, "ʿIyāḍ b. Mūsā," *Encyclopaedia of Islam, Second Edition* (Brill Online, 2013). This commentary was also available in digital manuscript form, making it even more attractive for this research. See al-Qāḍī ʿIyāḍ, *Kitāb al-Tanbīhāt al-mustanbaṭa ʿala ʾl-kutub al-Mudawwana wa ʾl-Mukhtaliṭa* (Munich: manuscript Cod. arab. 339 digitally published by Bayerische Staats Bibliothek).

213. A recent article gives good background to al-Qāḍī ʿIyāḍ. See Camilo Gómez-Rivas, "Qāḍī ʿIyāḍ (d. 544/1149)," in *Islamic Legal Thought: A Compendium of Muslim Jurists*, ed, by Oussama Arabi et al. (Leiden: Brill, 2013), 323-338.

background for the text explaining the scholars involved in its origins, discussion of *fiqh* from the text of the *Mudawwana* along with comparisons with other *madhāhib*. He also includes explanations for strange words, including pronunciation. Al-Qāḍī ʿIyāḍ's text is pertinent to this particular research as included at the beginning of the text is a table of contents for the work as a whole, listing the *kitāb*s dealt with in the commentary in a particular order. Accessibility to a manuscript copy of the text has also made this an interesting part of the research.

3.2.4. al-Rajrājī: *Manāhij al-taḥṣīl*

The modern editor of al-Rajrājī's commentary, Abū ʾl-Fāḍil al-Dimyāṭī, admits to the difficulty in finding adequate biographical information concerning al-Rajrājī. Quoting another source, Shaykh al-ʿUlamāʾ Abū Uways Muḥammad al-Amīn, al-Dimyāṭī explains this is his only source for any biographical information. Part of the difficulty is that al-Rajrājī comes from a Berber background, a group for whom few sources of information are available. Al-Rajrājī is described as being qualified to acquire an understanding of the *Mudawwana* given the fact that he was trained in *fiqh*. Like many others of his day, having completed the *ḥajj* was also a qualification considered valuable in scholarship. He was specialized in commentary of the remembrances of what was real for the Imāms from the meanings and the use of the words of Ibn Rushd and al-Qāḍī ʿIyāḍ and the expositions of Abū al-Ḥasan al-Lakhmī. He was also known for being accomplished in Arabic.[214]

3.2.5. al-Jubbī: *Kitāb sharḥ gharīb alfāẓ al-Mudawwana*

Concerning al-Jubbī, little is actually known. Maḥfūẓ states that it is generally assumed that al-Jubbī was from the 4th-5th/10th-11th century.[215] The language of al-Jubbī is

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214. See al-Rajrājī, Abū ʾl-Ḥasan ʿAlī b. Saʿīd, *Manāhij al-taḥṣīl wa-natāʾij laṭāʾif al-taʾwīl fī sharḥ al-Mudawwana wa-ḥall mushkilātihā* (Beirut: Dār Ibn Ḥazm, 2007), 12.

215. The modern edition consulted for this research, according to Maḥfūẓ, is based on a manuscript dated 889/1484 located at the National Library in Tunis, manuscript number 1946.

an interesting point, as his language includes vocabulary specific to the geographical region of modern-day Tunisia, including words such as *al-sfanāriya*[216] rather than *al-jazar* to refer to carrots and *al-kaskāsa* instead of *ʿaṣa lil-rāʿī maʿqūfa* for a hooked shepherd's stick. This indicates his origin as being local to the region.[217]

As the title of al-Jubbī's text states, he is simply commenting on what is considered strange (*gharīb*)[218] in the text of the *Mudawwana*, not necessarily needing to comment on each subject which it discusses. It acts as a glossary for the reader of the *Mudawwana* who may be unfamiliar with some of its vocabulary. With this in mind, it is interesting to observe the subjects which receive more attention by al-Jubbī than others—subjects which might require more attention by the reader than others, or which readers may have more difficulty in understanding. Appendix C displays the page lengths of each chapter of this text (the final of the five commentaries listed), with the vast majority of them consisting of one or two pages. Note that the modern editor has also included footnotes in the text, so one page of text may actually mean simply a word or two that needed some sort of definition; the modern editor's footnotes sometimes take up as much room as al-Jubbī's original text. Those subjects which require more explanation (more than two pages) include only those *kitāb*s which appear, in all the modern editions, at the beginning of the *Mudawwana*. These *kitāb*s include *Kitāb al-Wuḍuʾ*, *Kitab al-Ṣalāt*, *Kitāb al-Zakāt*, *Kitāb al-Ḥajj*, *Kitāb al-Jihād* , and *Kitāb al-Nudhūr*.

This concludes the description of the sources consulted for this research, namely the manuscripts and commentaries of the *Mudawwana*, as well as the modern editions of *al-Mudawwana al-kubrā*. Prior to looking specifically at the sources themselves, the specific

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216. This is the word in modern common usage in Tunisia for carrots.

217. See al-Jubbī, *Kitāb sharḥ gharīb alfāẓ al-mudawwana* (Beirut: Dār al-Gharb al-Islāmī, 2005), 2-8.

218. or rare: In his listing of the manuscript for this text, Derenbourg translates al-Jubbī's title into French to read "*Livre contenant un commentaire sur les expressions rares de la Moudawwana.*" See Hartwig Derenbourg, *Les Manuscrits Arabes de l'Escurial* (Paris: L'École des Langues Orientales Vivantes, 1884), 10:395.

roles undertaken by various individuals in the formation and transmission of the *Mudawwana* will be illustrated. The purpose of this is to better understand the influence these individuals would have had in the formation of the *Mudawwana* so as to bear those in mind as the source material evidence is examined.

Chapter 4
Roles in the Formation of the *Mudawwana*

The world of ancient Islamic manuscripts is fraught with difficulties. Not least of these is the language with which scholars today discuss the individual roles played by various personalities in the creation of a manuscript. One reason for the chaos which exists is a non-uniformity amongst scholars of Islamic studies in the terminology used to refer to these roles and responsibilities. This issue was addressed by Sebastien Günther in his article "Assessing the Sources of Classical Arabic Compilations."[219] Through his article, Günther creates a lexicon of terms which he hopes can be used by scholars of Islamic studies in order to reduce inconsistencies between them occurring from mismatched terminology. A contributing factor to this disorder is the multiple languages used by scholars from various backgrounds. Simple agreement on terms and definitions to be used by a breadth of scholars could potentially reduce confusion significantly and assist in the advancement of a clear understanding within Islamic studies of how particular manuscripts have been created and transmitted. His efforts in this regard are pertinent to the current research. Below are categories and definitions presented by Günther with comments concerning how they apply to this particular research. Günther's terms will be used later in section 6.5 to assess the roles amongst specific personalities in regards to the formation of the *Mudawwana*.[220]

4.1. Transmitter

Transmission is both an internal as well as external process in terms of the *Mudawwana*. The sayings of Mālik and Ibn al-Qāsim are transmitted by Saḥnūn in his text. This is the internal process of transmission. Externally, the text of the *Mudawwana* has been

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219. Günther, "Assessing the Sources."

220. See below section 6.5 on page 205.

transmitted as early as the end of the third century, according to the information which

Muranyi has provided concerning fragments found in the mosque library of Kairouan.

Although likely very different processes, these two forms are transmission, information being

conveyed from one time/form/document to another through the action of an individual.

4.2. Author

Concerning authorship, Günther states an author is "a 'writer' whose written work is

provably (*sic*) the result of *creative* scholarly efforts" (emphasis Günther).[221] With this

understanding, those who are responsible for creative work within a given text are given

credit for their contribution to that text. Note that Güther specifies that the author is also some

form of writer, and has created written work. In the case of the formative period of Islam,

these could be difficult qualifiers to confirm—much of the material is believed to have been

oral history as there is very little material evidence for written work in the early part of the

formative period. For as in the case of Mālik, trying to determine if in fact he qualifies as an

author of the *Mudawwana* according to these parameters would mean needing to determine if

he actually wrote some of the material found within the *Mudawwana*. According to the strict

parameters of Günther's definition, simply having said something, and being quoted, would

not qualify as being an author. Either the definition needs to be adjusted to include quoted,

creative work, or authorship cannot be applied to those of whom it cannot be proven that they

were responsible, even in part, for the writing of the work.

4.3. Writer

Günther defines a writer as: "any scholar to whom a conclusively edited written work

is attributed."[222] It appears from this definition, in comparing it with that provided for author,

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221. Günther, "Assessing the Sources," 88.

222. Günther, "Assessing the Sources," 88.

that Günther is using creativity as the differentiation between an author and a writer. Both are responsible for writing a known written work. Both these definitions, and that of editor will be discussed extensively as they relate to Saḥnūn and Ibn al-Qāsim, and to some extent, Mālik in section 6.5.5.

4.4. Editor

Günther clarifies the word editor with the word 'recensionist'. He defines this individual as a 'writer' who it has been proven has "relied, in all or in most cases, on one and the same scholar (or 'direct guarantor')—while the latter can be identified in the bio-bibliographical literature as the 'author' of a book dedicated to the topic relevant in this context."[223] So the editor makes use of a work, written or oral, that is attributable to another individual, being a writer himself. Note that an editor with this strict definition is not dependent on a previously written work. For if an individual can be credited with having adjusted in some way the work of another, where this previous work had not been written down, the work of the editor is still valid and the work takes on a new form in writing. Günther's qualification is that this new work must not simply be a matter of taking notes, there must be some writing, not necessarily creative to differentiate it from author, which the editor is involved in.

Although not fitting the strict definition of editor as presented here, al-Qābisī, in the early 5th/11th century engages in activity which falls within the scope of both a commentator as well as an editor. Al-Qābisī's contribution in the continuation of and formation of the Mudawwana is evidenced by the research of Muranyi. Although it is difficult to make generalizations about the nature of al-Qābisī's work relative to the manuscripts that are

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223. Günther, "Assessing the Sources," 88.

located in the mosque library of Kairouan,[224] Muranyi has published some evidence which is useful in this thesis concerning the formation of the *Mudawwana*. In six colophons he has documented, three from the mosque library of Kairouan and three from the Qarawiyyīn library in Fes, either al-Qābisī or one of his students is referred to by name. Al-Qābisī had a circle of students who, along with al-Qābisī himself, appear to have been very active concerning the transmission of the text of the *Mudawwana*.

The colophon remarks Muranyi quotes are extensive. In one such colophon, the colophons of the preceding texts which were used as sources, are added to create a string of texts that have been copied from those coming before it. The final entry, at the end of the list, describes what was heard from two specific teachers, ʿIsā b. Miskīn and Aḥmad b. Abī Sulaymān. The colophon concludes with a personal remark from al-Qābisī's preceded with: "*qāla* Aḥmad, *qāla* Saḥnūn,"[225] Aḥmad here presumably being one of Saḥnūn's own disciples. Muranyi goes on to provide further colophon examples which demonstrate that the transmission of the text during the time of al-Qābisī and his students was not restricted to simply transmission of the text, but also included the creation of new copies/editions of the text with certificates of authenticity. These new editions give al-Qābisī the role of editor. He interprets the versions available to him, indicating, according to Muranyi, variants in the various *riwāyāt* of the text.[226]

One clear example which Muranyi provides of the work of al-Qābisī concerns the comments from the mouth of Saḥnūn which are added at the end of a portion of text in *Kitāb*

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224. Access to the is impossible and Muranyi's published work does allow for that

225. Muranyi, *Die Rechtsbücher*, 46.

226. Here in this section, rather than given further examples to support this, Muranyi simply refers to previously published material of his, both his *Beiträge* and his "Notas sobra la transmission" in *Qantara*.

al-Jawāʾiḥ.[227] The subject matter is of a man who purchases seeds in order to harvest them, then later purchases the land itself. Muranyi notes that these comments, included in the printed editions within the flow of the text, are found handwritten in the margin on a manuscript in the mosque library of Kairouan. Al-Qābisī's own notes indicate that these particular comments, less than three lines long in the printed edition, are not agreed upon by the group (*jamīʿa*, presumably a group of individuals belonging to the *ʿulamaʾ*), in contrast to most of the earlier quoted comments of Saḥnūn. In this particular instance, al-Qābisī is acting in the capacity of a commentator, indicating who is and is not in agreement with Saḥnūn's commentary on this particular text. Al-Qābisī has gathered together the different opinions of scholars concerning their attitudes toward the reliability of statements ascribed to Saḥnūn. Al-Qābisī is acting in the role of both commentator and editor.

Although Günther's intent was that these definitions be applied to classical Arabic compilations, they are useful in a discussion concerning the roles of the personalities involved in the formation of the *Mudawwana*. Application of the terms may prove to be somewhat challenging given the difference in the nature of the formation and transmission of texts between the formative and classical periods of Islamic history. Adjustments may need to be made for circumstances which do not exactly fit the definitions as laid out by Günther. Yet their application is useful outside of the boundaries of the classical period.

Additionally, these terms can also be applied to the modern period, specifically those of transmitter and editor. The formation of the text of the *Mudawwana* did not end with the Classical period. In fact, the modern editors in the 20th and 21st centuries have played a meaningful role in the form which the *Mudawwana* has achieved in the modern period.

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227. See the 1323/1905 Cairo edition 5:35 and the Beirut edition 3:589. Note that the Beirut edition in this part of the text of the *Mudawwana* does not have subject headings.

The role of the modern editor of ancient or medieval Arabic texts requires a plethora of skills. This would include, but is not be limited to, linguistic expertise in Arabic, historical knowledge and religious education. Yet there is no minimum requirement in order to identify oneself as an editor. With no regulation of sorts amongst editors, the result is varying degrees of quality from one edition/editor to the next. It is not a revelation that editing a text is an interpretive practice.[228]

In editing a work for publication, modern editors make significant changes to the form of the text—its presentation—even if they do not change the content of the text itself. These changes can easily shift the perceived meaning of the text for the reader, both in terms of meaning and authority. This shift in meaning can be more significant if the reader is less informed concerning the formation of ancient texts and their modern publication.

The goal of the modern editing of ancient Arabic texts is in dispute. The dispute, according to the literature, rises over the discrepancy between the said goal and the practical outworking of the practice. The spoken goal can be phrased similarly to that given by editor Ramaḍān ʿAbd al-Tawwāb: to restore "the text to the form it had when the author issued it."[229] ʿAbd al-Tawwāb was influenced by his teacher, ʿAbd al-Salām Hārūn. Hārūn's definition of editing, when it comes to medieval Arabic works in the modern period, "means that a book be rendered truthfully, as its author wrote/composed it."[230] Yet, the practice does

228. Thomas Tanselle, in his survey of late 20th century works dealing with editing makes this observation based on the statement of Spadaccini and Talens in the introduction to their work. See *The Politics of Editing* (Minneapolis: University of Minnesota Press, 1992), ix. See also G. Thomas Tanselle, "Textual Instability and Editorial Idealism," *Studies in Bibliography* 49 (1996), 29.

229. See Ramaḍān ʿAbd al-Tawwāb, *Manāhij taḥqīq al-turāth bayna al-qudāmā waʾl-muḥdathīn* (Cairo: Maktabat al-Khānjī, 1985), 60 as cited in Wadād al-Qāḍī, "How 'Sacred' is the Text of an Arabic Medieval Manuscript? The Complex Choices of the Editor-Scholar," *Theoretical Approaches to the Transmission and Edition of Oriental Manuscripts: Proceedings of a symposium held in Istanbul March 28-30, 2001* (2007), 21.

230. ʿAbd al-Salām Muḥammad Hārūn, *Taḥqīq al-nuṣūṣ wa nashruhā* (Cairo: n.p., 1977), 46 as cited in al-Qāḍī, "How 'Sacred' is the Text?" 21.

not always reach the objectives of the theory, as described by al-Qāḍī.[231] As a result of this discrepancy, and in order to preserve the fidelity of texts in from the Arabic classical period, Al-Qāḍī has gone on to propose different categories of manuscripts, suggesting that editorial practices should recognizably differ between Arabic texts, as different types of texts should be handled in different ways. She proposes that texts which should have a minimum of intervention include early Arabic papyri and poetry, illustrations in manuscripts with artistic value and proverbs and sayings which have socio-historical value. A second category, which requires, in her opinion, greater editorial input she classifies as having "authorial authorization"—those scribed directly by the author or containing certificates of hearing or reading of the author, or copies thereof. A third category, requiring even more editorial contribution, would include the balance of Arabic texts. For each category, differing editing criteria should apply, restricting and sometimes freeing editorial discretion and interference in the text—all with the goal of attempting to establish what the author intended. Al-Qāḍī makes it clear that she believes a crucial responsibility of the editor is make the text accessible to the reader of today, labelling this a moral duty.[232]

Inevitably decisions that editors make in preparing the text will result in something new. Editors are not simply releasing a text through their work, but they themselves are "participating in its ongoing life."[233] It should be expected that modifications will take place to some extent in the text, as this is part of the role of the editor. Yet to what extent the editor

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231. Her analysis is that although these editors agree theoretically on the principles of editing and the desire to maintain the fidelity of the text according to their understanding of the original author's intent, the practical outworking of that theory is what results in differences in their results. See al-Qāḍī, "How 'Sacred' is the Text?" 19-21.

232. See al-Qāḍī, "How 'Sacred' is the Text?" 34-52.

233. See Paul Eggert, "Editing Paintings/Conserving Literature: The Nature of the 'Work'," *Studies in Bibliography* 47 (1994), 77.

should be able to interfere with the text is not agreed upon by all, hence al-Qāḍī's desire to set some parameters as described above.[234]

4.5. Authority

The defintion of authority used by Günther is "any scholar to whom material incorporated in a given compilation is explicity ascribed." There is no doubt that both Mālik and Ibn al-Qāsim, by this definition, should be considered authorities in the *Mudawwana*, as will be seen. Accordingly, Saḥnūn, and several other colleagues of Mālik, such as Ibn Wahb, should be included in this designation as they are also ascribed explicitly with material found within the text. The ascription of authority in this sense is not complicated with the text of the *Mudawwana*, as material presented is clearly attributed either to one authority or another. The meaning of authority used here is one who is considered to be an expert in a particular area. The *Mudawwana* seems to demonstrate an understanding of degrees of authority. So that, Ibn al-Qāsim, Mālik and Saḥnūn, along with Mālik's other companions, can all be considered authorities according to Günther's terminology. But they may not all be perceived of as having the same level of authority. This will be an important consideration when looking at a specific portion of text in section six. Differing levels of authority will be used in order to reach a conclusion concerning a difficult point of interpretation.

Many of Günther's terms support multiple modifiers in order to differentiate between various forms of one particular role. For example, concering authority, Günther relates that the text may indicate an "earliest" authority, or "main" authority. Other modifiers for

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234. Controversy in textual criticism is not restricted to the field of Arabic-Islamic studies. For a discussion of issues in modern literary textual criticism between German and American perspectives, see Hans Walter Gabler, "Textual Criticism and Theory in Modern German Editing," in *Contemporary German Editorial Theory*, ed. Hans Walter Gabler, George Bornstein, and Gillian Borland Pierce (Ann Arbor: The University of Michigan Press, 1995).

authority include original and direct. Given that the chain of transmission most common in the *Mudawwana* is that from Saḥnūn to Ibn al-Qāsim to Mālik, it is rare that these modifiers are necessary, the earliest or main authority being apparent to the reader.

4.6. Source

Any text used directly by a compiler is considered by Günther as a direct source. In terms of souce material, the *Mudawwana* is a complicated text, as are other legal works from this particular time period. The dearth of extant ancient works makes source identification difficult for most texts of the formative period. *Isnād* analysis, along with comparisons of the *matn* material amongst sources helps to identify the origins of some texts. Muranyi has done much investigative work in attempting to identify the particular sources of the *Mudawwana*.[235] His identification of the primary sources includes the *Muwaṭṭaʾ* (NB: not of Mālik) and the *Jamiʿ* of ʿAbd Allāh b. Wahb (d. 197/812), the *Mukhtaṣar al-kabīr* of ʿAbd Allāh b. ʿAbd al-Ḥakam (d. 214/829) along with the writings of Ashhab b. ʿAbd al-ʿAzīz (d. 204/819).[236]

4.7. Commentator

Although not a category defined by Günther in his terminology, the role of commentator is introduced here due to the number of commentators consulted in this research. Commentators are those who live following the period of the writing and dissemination of the text, and provide some form of explanation of the meaning or significance of the text. Commentators may integrate more than one work in their texts. Qurʾanic material may also be included according to the subject matter.

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235. See Muranyi, *Die Rechtsbücher*, 23-35.

236. See Miklos Muranyi, *Materialen zur Mālikitischen Rechtsliteratur* (Wiesbaden: Otto Harrassowitz, 1984), 1.

Having completed a survey of the terminology Günther employs, the sources of the *Mudawwana* will now be presented through comparative analysis. Following that, a portion of the text of the *Mudawwana* will be focused on. Then Günther's terminology will be applied to the personalities involved in the formation of the *Mudawwana*.

Chapter 5
Observations from the Sources

5.1. Structural Observations

5.1.1. *Kurrāsa*s and *Kitāb*s—Their Order in the Text

Comparing the structure of the text of the *Mudawwana* over a lengthy period of history requires the understanding that the structural format differs over time. In the modern editions, aside from physical volumes with which the large text is divided, the main dividing principle is the *kitāb*. However, this is not the case with the manuscripts. For the manuscripts, the presence of *kurrāsa*s is a higher, and more relevant division, holding one or more *kitāb*s together. Another organizing factor for manuscripts, but rarely evidenced, is that of the *rizma*. This is a larger division within the text, different from the *kurrāsa*, consisting of several *kitāb*s. There is no evidence to support the idea that a *rizma* though, was a physical division. On a smaller scale, within a *kitāb* itself, subject headings provide divisions between different subjects. *Kitāb*s and subject headings are present in all mediums, allowing for easier comparisons on those levels. Awareness of the differing forms of organization is the first step in comparing the evidence from a structural perspective.

The presence of the title pages in the BL and CBL manuscripts testify to the significance of the division of a *kurrāsa*. The title page of each *kurrāsa* names the *kitāb*s which are included within that *kurrāsa*. However, it is not possible to examine the order of the *kitāb*s as a whole within a manuscript as the *kurrāsa*s were themselves loose from each other. So it appears there was no fixed order of the *kurrāsa*s. Each *kurrāsa* seems to have been held together, yet was not bound to another *kurrāsa*. The *kurrāsa*s of the CBL manuscripts exhibit features indicating that they were treated as a stand alone text yet were part of a larger work. A set of two holes is found on the inside margin of the text. The most

plausible of explanations is that these are holes which held some form of string, binding the *kurrāsa* together.[237] It is also evident that the folios of the different *kurrāsa*s are not the same size, however they are the same size within each *kurrāsa*. Additionally, the binding holes do not line up from one *kurrāsa* to another so it appears that the *kurrāsa*s were not held together. This would support the belief that the *kurrāsa*s themselves were stand alone texts. The title pages of each of the *kurrāsa*s indicate that the *kitāb*s are part of (*min*) the *Mudawwana*.[238] It is difficult to understand exactly what the relationship was of the *kitāb*s to each other, both globally and within each *kurrāsa*. This evidence together demonstrates that the *kurrāsa* is a weightier organizing principle than the *kitāb* within the manuscripts. *Kurrāsa*s provide one of the only means with which to evaluate the order of the material of the *Mudawwana* prior to the modern period. The commentaries will also provide some evidence concerning the issue of the order of the *kitāb*s.

Contents of each *kurrāsa* are identified on the title page. (See figure 4 on page 98 for a sample title page.) This includes mention of the *kitāb*s, the *riwāya*, or transmission line of the content, and an indication that the *kitāb*s are "from the *Mudawwana*" (*min al-Mudawwana*). Each of the manuscripts identify the text as *al-Mudawwana* and specifically as the *riwāya* Saḥnūn ʿan Ibn al-Qāsim ʿan Mālik b. Anas. Although there may be other

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237. See above on page 65 note 161 for Heffening's theory from the manuscript fragments in Leuven.

238. See above section 3.1.13 on page 72 concerning the CBL mss Ar 3006 and 4835 concerning the title pages. Figure 4 below on page 98 provides an example of a title page expressing the *kurrāsa* is "*min al-Mudawwana*." These are the first two words of the third line in Figure 4.

*Mudawwana*s,[239] it is clear that this particular text came to be known as the transmission chain from Mālik to Ibn al-Qāsim to Saḥnūn.

The title of the modern text, *al-Mudawwana al-kubrā*, does not appear anywhere before the 14th/20th century. Modern editors appear to be responsible for this emendation of the name of the text from the medieval period. There is no doubt that the text is worthy of the title, due to its immense size. There is no evidence, though, to support that either *kubrā*, or *Mudawwana* for that matter, were names that the author or writer of the *Mudawwana* had in mind when producing the text.

The *kurrāsa*s of the BL ms Or 6586 are labelled in the upper left-hand corner of the title page with a number in clear, well-defined, unhurried Arabic script. Written with a different type of script and style from that of the title page, it seems that these numbers were not written by the original copyist. Yet, given the nature of the hand, it is most unlikely that this numbering was done in modern times as part of the library holdings. Rather, it is most likely this was a numbering system developed earlier, possibly in the medieval period, to assist in locating and maintaining the organization of the *kitāb*s of the *Mudawwana*. These numbers imply an order of the *kitāb*s within the text of the *Mudawwana* which is not

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239. Compare references to the Moroccan family code from the modern period, as well as the *Mudawwana* of Abū Ghānim Bishr b. Ghānim al-Khurāsānī (d. unkn but early decades of 3rd/9th century) in Berber. See Vermondo Brugnatelli, "Some Grammatical Features of Ancient Eastern Berber (the Language of the *Mudawwana*)," in *He Bitaney Lagge: Studies on Language and African Linguistics In Honour of Marcello Lamberti*, ed. Luca Busetto et al. (Milan: Qu.A.S.A.R., 2011). This is an Ibāḍī legal document which shares some similarities with the *Mudawwana* attributed to Saḥnūn. Modern editions of this text recognize the existence of an *al-Mudawwana al-ṣughrā* (the small *Mudawwana*) and an *al-Mudawwana al-kubrā* (the large/ great *Mudawwana*). Francesca has noted that both of these texts are identical other than the fact that the "larger" version contains editorial comments from the twentieth century editor Muhammad b. Yusuf Aṭfayyash. Clearly the influence of the modern editor in "adjusting" the title to include *al-kubrā* changes the way in which this text will be viewed, with an unsuspecting reader naturally assuming that this text is significantly different, even from an original point of view, from that of the *ṣughrā* version. Although this Ibāḍī text appears to be significantly shorter and less detailed than the *Mudawwana* attributed to Saḥnūn, the 14 chapters located in it all appear as subjects in one form or another of the Mālikī text. Examples of the subject matter of various chapters include *ṣalāt*, *zakāt*, *ṣawm* and *diyāt*. See Ersilia Francesca, "Early Ibadi Jurisprudence: Sources and Case Law," *Jerusalem Studies in Arabic and Islam* 30 (2005), 246-47. Also see Ersilia Francesca, "Abū Ghānim Bishr b. Ghānim al-Khurāsānī," *Encyclopaedia of Islam, Three* (Brill Online, 2014).

explained anywhere. As the manuscript is incomplete, it is difficult to make any but the most basic of observations about the *kitāb*s as they appear in these *kurrāsa* groupings.

Of the five *kurrāsa*s in the BL ms Or 6586, one has a missing title page, thus only four of the *kurrāsa* numbers were recovered, namely 20, 37, 40 and 50.[240] The *kurrāsa* with a missing title page will be referred to as *kurrāsa* "X" for identification purposes. To prove that *kurrāsa* X was indeed a *kurrāsa* in its own right rather than simply loose folios that happened to be found with these other *kurrāsa*s, it would be important to point out that one folio contains the end phrases of *Kitāb al-Murābaḥa*, followed directly on the same folio on the following line with the title and the beginning of *Kitāb al-Wakālāt*. So one *kitāb* ends on the same folio on which another *kitāb* begins indicating these *kitāb*s were grouped together. On another folio *Kitāb Taḍmīn al-ṣunnāʿ* begins on the same folio in which *Kitāb al-Wakālāt* concludes. Therefore, an appropriate conclusion, given this evidence, is that at least these three *kitāb*s were conceived in this particular manuscript as being a group of some kind together in a single *kurrāsa*. The contents of each *kurrāsa* are as listed below. The meanings of the *kitāb*s which are grouped together in each *kurrāsa* may give a clue concerning why they were grouped together. Numbers in square brackets following the *kurrāsa* number from the manuscript refer to the line on which the *kitāb*s can be found on the spreadsheet in Appendix B on page 236.

- 20 *Kitāb al-Īlāʾ* (vow of continence [33])[241]

- 37 *Kitāb al-Jawāʾiḥ* (agricultural calamities [64]), *Kitāb al-Musāqāh* (sharecropping contracts [63]), *Kitāb al-Luqaṭa* (found property [92])[242]

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240. See BL ms Or 6586:1a, 29a, 53a and 74a.

241. BL ms Or 6586:1a-11a

242. BL ms Or 6586:29l-51a

- 40 *Kitāb al-Sharika* (partnership [65]) (incomplete)[243]

- 50 *Kitāb al-Wadīʿa* (entrusting [90]), *Kitāb al-ʿĀriyya* (commodity loan [91]) and *Kitāb al-Hibāt* (donations [85]) (all three *kitāb*s incomplete)[244]

- X *Kitāb al-Murābaḥa* (sale at stated cost price [50/52]) (incomplete), *Kitāb al-Wakālāt* (administrative agencies [53]) and *Kitāb Taḍmīn al-ṣunnāʿ* (responsibility/security/liability of the artisans [58])[245]

Three of the five *kurrāsa*s contain more than one *kitāb*. Both the groupings of the *kitāb*s themselves within these *kurrāsa*s is curious as well as the group order itself. In *kurrāsa* 37, each of the *kitāb*s deals with a subject of an agricultural nature. It is possible that this is the glue which holds these subjects together in this *kurrāsa*. In *kurrāsa* 50, the subjects of all three *kitāb*s is related to some type of giving. Again, it could be possible that the subject matter between the various *kitāb*s found together in one *kurrāsa* is what brings them together. Yet in *kurrāsa* X it is difficult to affirm that subject matter alone is what brings these *kitāb*s together in this *kurrāsa*. It is possible that at the time the medieval copyist put these *kitāb*s together the overriding reason for him was simply the number of folios in the various *kitāb*s compared with the number of folios available in his *kurrāsa*. Such pragmatic reasons should not be neglected in consideration.

The folios of this manuscript are in order for the most part, yet the folios concerning *kurrāsa* X are not properly collated. As has been described, it is possible to reconstruct the contents, to a (confident) degree, as when one *kitāb* ends, the following *kitāb* of the same *kurrāsa* begins on the same side of the folio where the previous *kitāb* ended. With a continuously

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243. BL ms Or 6586:52a-73a

244. BL ms Or 6586:74a-90b

245. BL ms Or 6586:91a and b, 12a-28a

flowing text within the *kurrāsa* it is possible to identify the *kitāb*s belonging to one *kurrāsa* with almost complete certainty. The folios for *kurrāsa* X though, 12a-28a and 91a and 91b, are not in consecutive order in this manuscript.

Of the title pages preserved in the CBL manuscripts there is little evidence to help understand the reason why *kitāb*s were grouped together into *kurrāsa*s as only one *kurrāsa* appears to contain more than one *kitāb* in it. This *kurrāsa* lists its contents as *Kitāb al-Mudabbar waʾl-walāʾ waʾl-mawārīth waʾl-ansāb*.[246] See figure 4 below on page 98.[247] The subjects of *mudabbar* (manumission of a slave through a will), *walāʾ waʾl-mawārīth* (clientage and inheritances/legacies) and *ansāb* (geneaologies) all seem to deal with relationships and wills, this could be the reason why these *kitāb*s were held together. But the evidence is too sparse in order to make a firm conclusion. With so few *kurrāsa*s in both manuscript collections containing more than one *kitāb*, it is difficult to perceive and conclude a presiding principle putting particular *kitāb*s together into one *kurrāsa*.

As demonstrated above through the title pages of the *kurrāsa*s, the *kitāb*s themselves were regarded as stand alone texts within the *Mudawwana* even though they at times appeared together within one *kurrāsa*. When the order of the *kitāb*s within the greater text of the *Mudawwana* is considered, it can be observed that the modern editions demonstrate a different order of the *kitāb*s from one edition to the next.[248] For example, in the 1323/1905 Cairo edition, *Kitāb al-ʿIdda wa ṭalāq al-sunna* [30] precedes *Kitāb al-Aymān bi-ʾl-ṭalāq wa*

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246. CBL ms Ar 4835:1a. As the matters surrounding this particular *kurrāsa* in the CBL manuscript and its contents are extremely relevant to the subject concerning the consistency of the names of the *kitāb*s, a fuller discussion concerning the title will be below in section 5.2.2 on page 116. Concerning the presentation of *kitāb* title pages, see section 5.3.3 on page 170.

247. See above page 61 for a description of Maghribī script to assist in reading the title page.

248. Refer to Appendix B on page 236 for a clear presentation of the order of each of the *kitāb*s in each modern edition. It will become immediately apparent that *kitāb* titles are not consistent amongst the manuscripts and modern editions. Be aware that the content within these *kitāb*s being discussed concerning their order is generally the same.

Figure 4. CBL ms Ar 4835:1a. Title page of the *kurrāsa* of *Kitāb al-Mudabbar waʾl-walāʾ waʾl-mawārīth waʾl-ansāb*. By permission of the Chester Beatty Library.

ṭalāq al-marīḍ [31]. This order concurs with the Abu Dhabi edition yet the titles of the *kitāb*s between the editions is not consistent. In the Beirut and Mecca editions, these two *kitāb*s appear successively, but much earlier—*Kitāb Ṭalāq al-sunna* [19] and *Kitāb al-Aymān bi-ʾl-ṭalāq* [20]—nine *kitāb*s earlier in the general order. Much further in the compendium, *Kitāb al-Murābaḥa* [50] appears before *Kitāb al-Gharar* [51] in the Beirut, Mecca and Abu Dhabi editions. While in the 1323/1905 Cairo edition, *Kitāb Bayʿ al-murābaḥa* [52] follows *Kitāb Bayʿ al-gharar* [51]. The 1323/1905 Cairo edition is again the only modern edition to place *Kitāb al-Hiba* [89] after *Kitāb al-Ṣadaqa* [88]; the other modern editions place *Kitāb al-Hiba* [86] after *Kitāb al-Hibāt* [85]. It is clear that the order is not consistent across the four modern editions examined.

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When considering the ordering of the *kitāb*s, limited comparisons can be made between the manuscripts and the modern editions. As the *kitāb*s themselves were considered works in their own right, as has been demonstrated above, then it is understandable that their order within the work might not be fixed. There are a total of four *kurrāsa*s between the BL and CBL manuscripts which contain more than one *kitāb*. These four *kurrāsa*s provide a small piece of evidence to demonstrate that the order of the *kitāb*s within the larger context of the *Mudawwana*, was not fixed. For example, *kurrāsa* 37 of the BL ms Or 6586 contains three *kitāb*s, however in each of the modern editions of the *Mudawwana*, the first two of these books, *kitāb*s *al-Jawāʾiḥ* (agricultural calamities [64]) and *al-Musāqāh* (sharecropping contracts [63]), are consecutive in the ordering of the *kitāb*s, yet the third *kitāb*, *al-Luqaṭa* (found property [92]), has about 30 *kitāb*s which separate it from the other two. Another example is that of *kurrāsa* 50, also having three *kitāb*s in it; two of the *kitāb*s, *al-Wadīʿa* (entrusting [90]) and *al-ʿĀriyya* (commodity loan [91]), are consecutive in the modern editions, yet the third *kitāb*, *al-Hibāt* (donations [85]), comes earlier in the order of the modern editions by five *kitāb*s. *Kurrāsa* X of the BL ms Or 6586 contains three books of which two are consecutive in the modern editions, *kitāb*s *al-Murābaḥa* (sale at stated cost price [50/52]) and *al-Wakālāt* (administrative agencies [53]), whereas the third *kitāb, Taḍmīn al-ṣunnāʿ* (responsibility, security and liability of the artisan [58]) follows later in the order of the modern editions. Given that all four modern editions share the same order concerning these few *kitāb*s from BL ms Or 6586, it does appear odd that these *kitāb*s, which are grouped together in these *kurrāsa*s of the BL manuscript, should be separated within the order of the modern edition and some so far apart from each other. It is apparent, from this evidence, that there were different traditions for ordering the *kitāb*s.

The *kurrāsa* numbers found on the title pages of BL ms Or 6586 (see above page 94 note 240) which were presumably used to provide some form of order for the *kurrāsa*s within

the greater text of the *Mudawwana* are very curious when compared with the order of the *kitāb*s in the modern editions.[249] These *kurrāsa* numbers seem to bear some type of comparative order, as the numbers generally do rise as you go down the list when compared with the order of the *kitāb*s in the 1323/1905 Cairo edition. However, with number 40 immediately following number 37 between *Kitāb al-Jawāʾiḥ* and *Kitāb al-Sharika*, and then later in the list number 37 following number 50 between *Kitāb al-ʿĀriyya* and *Kitāb al-Luqaṭa waʾl-ḍawāl waʾl-ābiq*, it seems that this demonstrates that no order of the *kitāb*s or *kurrāsa*s was fixed.

A similar organizing principle, such as the numbers in the BL ms Or 6586 provide, appears to have been found by Muranyi in his observations of a manuscript in the Qarawiyyīn library in Fes. When examining manuscripts of the *kitāb*s of the *Mudawwana* in Morocco, Muranyi observed the storage of the manuscripts is rather disorganized, yet the *kitāb*s themselves were in thematically arranged groupings.[250] Unfortunately, Muranyi does not elaborate on these themed groups. What he does explain, though, is his discovery of a skeletal organization of the larger text of the *Mudawwana* by some form of groupings listed within Qarawiyyīn ms 574. Each section within this organizational framework is referred to as a *rizma*.[251] From the arrangement listed in the manuscript, it is clear that the *kitāb*s were arranged in some form of content groupings as the groupings themselves were named thematically. The list of the groupings which Muranyi found are as follows:

• 1. *Rizmat al-Sharāʾiʿ* (Islamic law) from *Kitāb al-Wuḍūʾ* (ritual purity) to *Kitāb al-Nudhūr* (vows)

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249. See Appendix A on page 232, second column from the left, for the listing of the *kurrāsa* numbers as they flow in the order of the *kitāb*s of the modern editions.

250. See Muranyi, *Die Rechtsbücher*, xi.

251. Lane, in his lexicon, defines *rizma* as meaning a bundle or a pack of something of which the contents are similar or related to each other. See Lane, *Lexicon*, 1:1078.

- 2. *Rizmat al-Nikāḥ* (marriage contracts) starting of course from *Kitāb al-Nikāḥ* and concluding with *Kitāb al-Īlāʾ waʾl-liʿān* (vow of continence and imprecation - those related to marriage issues, e.g. fidelity)

- 3. *Rizmat al-ʿAbīd* (slaves) which contained from *Kitāb al-ʿItq* (manumission) to *Kitāb al-Walāʾ waʾl-mawārīth* (clientage and inheritances)

- 4. *Rizmat al-Buyūʿ* (sales) and running from presumably[252] *Kitāb al-Ṣarf* (exchange) and ending with *Kitāb al-Ṣulḥ* (settlement/negotiation)

- 5. *Rizmat al-Ijāra* (renting/leasing) which includes *Kitāb al-Ijāra* (renting/leasing) to *Kitāb Taḍmīn al-ṣunnāʿ* (responsibility/security/liability of the artisan)

- 6. *Rizmat al-Aqḍiya* (judgments) concluding with *Kitāb Ḥarīm al-ābār* (separated space around wells). This final one, Muranyi says, contains only one *juzʾ* from the *Mudawwana* with the following *kitāb*s being from the *Mukhtaliṭa*.[253]

It is possible to compare this skeletal outline of the organization of the *Mudawwana* from the 5th/11th century with the general order of the *kitāb*s in the modern editions.[254] Initially it seems to fit the outline, however it is difficult to find reconciliation between the lists as there is a discrepancy with *Kitāb al-Istibrāʾ* (healing/freeing/ridding of oneself)—it falls between the second and third *rizma*s leaving its place of belonging rather ambiguous according to this setup. Additionally, Muranyi's account attests that the final *rizma*, that of *al-Aqḍiya*, contains

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252. Muranyi only mentions the *kitāb* with which this *rizma* concludes.

253. . When Muranyi describes these *rizma*s he neglects to clarify his use of terminology making his statements sometimes confusing. In all of his descriptions of the first five *rizma*s he uses only *kitāb*s to list the contents of the *rizma*s. In the case of the sixth *rizma*, without having used *juzʾ* anywhere else in describing the contents, he describes this *rizma* as including only one *juzʾ* from the *Mudawwana*. This *juzʾ* he names *Kitāb Jināyāt al-ʿabīd* (most certainly *Kitāb al-Jināyāt* of the modern editions). Then he says the rest of this *rizma* contains *ajzāʾ* from the *Mukhtaliṭa*. It is not clear if there is just one *juzʾ* or more in each of the other *rizma*s. Any other *juzʾ* in another *rizma* are also not named.

254. See Appendix A on page 232 for the chart which displays the *rizma* organization of the *kitāb*s according to the outline of ms Fes 574, in the first column from the left.

only one *juzʾ*. However, when looking at the list of *kitāb*s in the modern editions, this *rizma* seems to contain more *kitāb*s than any other *rizma*. Muranyi's lack of detail concerning the contents of this section leads to doubt that it would really be this large. There is no clarity in this regard and one wonders if this organization according to *rizma*s might possibly have been simply a local organizing principle in the region of Morocco or even just in Fes. Yet this example is an accurate representation of the difficulties faced in a study of the *Mudawwana* as conclusions seem to bring up more questions than those that are answered.

Given that the order of the *kitāb*s is different from one modern edition to another, it should be asked on what did the editor base his decision concerning the order of the *kitāb*s. The absence of a fixed order for the *kitāb*s could be firmly established if two complete manuscripts of the work were somehow bound or ordered and demonstrated differing orders of the *kitāb*s. Other than a bound copy, a list of the order of the *kitāb*s, such as a table of contents, would also demonstrate a fixed order. Concerning this matter, the commentaries provide some evidence.[255] Appendix C on page 238 provides a list of the order of the *kitāb*s in each of the five commentaries consulted for this research.

Al-Qāḍī ʿIyāḍ lists a table of contents of the *kitāb*s of the *Mudawwana* discussed in his commentary *al-Tanbīhāt al-mustanbaṭa*. Although it may appear useful to have this seeming resource, upon closer inspection it is revealed that the table of contents is unreliable

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255. In addition to the commentaries consulted for this research, an additional source from one manuscript fragment belonging to the Leiden collection provides some evidence concerning the order of the *kitāb*s. Leiden ms Or 14.039 has not been positively identified. The language, layout and the one *kitāb* title in it (*Kitāb al-Shuhādāt*) all support its close association with the *Mudawwana*. There is no direct correspondence with the content of Leiden ms Or 14.039 with the text of the *Mudawwana*, so it is suspected to be a commentary of the text. It is not a fragment of any of the commentaries investigated in this research. In this fragment, the section on *Kitāb al-Shuhādāt* immediately follows *Kitāb al-Aqḍiyya*. Although at first this may appear to be a discrepancy with the modern editions as their order lists *Kitāb al-Qaḍāʾ* [68] between *kitāb*s al-Shuhādāt [69] and al-Aqḍiyya [67], this is not the case. For it should be noted that in both the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition, *Kitāb al-Qaḍāʾ* is found within *Kitāb al-Aqḍiyya* as some form of a sub-*kitāb*, rather than its own *kitāb*. So when comparing the order of the *kitāb*s between the modern editions with the order found within this fragment, this should not be seen as a discrepancy. For a photo of this particular folio, see J.J. Witkam, *Catalogue of Arabic Manuscripts in the Library of the University of Leiden and Other Collections in the Netherlands* (Leiden: Brill, 1982), 66.

concerning the order of the *kitāb*s within the commentary itself. For example, in the table of contents *Kitāb al-Ḍaḥāyā* appears before *Kitāb al-Dhabāʾiḥ* whereas in the text of the commentary, the order is reversed.[256]

In al-Jubbī's commentary, *Kitāb sharḥ gharīb alfāẓ al-Mudawwana,* there is a group of *kitāb*s, from *Kitāb al-Nikāḥ al-awwal* to *Kitāb Ṭalāq al-sunna* which remain relatively together in a group order, but this group itself features much later in the order of the contents than that generally seen in either the text of the *Mudawwana* itself in the modern editions or the other commentaries.[257] This would suggest that some *kitāb*s were seen as belonging together in some type of theme or grouping, similar to the idea of the *rizma* encountered in the manuscript in Fes.

The commentary of Ibn Rushd, *al-Muqaddimāt al-mumahhidāt*, has more inconsistencies concerning the order within which individual *kitāb*s appear in comparison with the modern editions. *Kitāb al-Ashriba* (cell I-21 in Appendix C) appears much earlier in the commentary order than that of the modern editions (compare cell B-95 of Appendix C).[258] In the middle of the commentary, another *kitāb* appears earlier than it does in other orderings, namely *Kitāb al-Tijāra ilā arḍ al-ḥarb* (commerce with/towards the land of war; cell I-41 of Appendix C). This evidence appears to demonstrate that between the time of the writing of the *kitāb*s and the writing of the commentary of Ibn Rushd, neither the names nor the order of the *kitāb*s was fixed. Closer to the end of the commentary, *Kitāb al-Ṣulḥ* appears later in the order (I-63) than it does in the modern editions of the text of the *Mudawwana* (B-58). But more significantly than these individual *kitāb*s in unexpected locations, there is a group of

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256. See ʿIyāḍ, *al-Tanbīhāt al-mustanbaṭa*, 1a, 49a and 49b.

257. See lines 36-43 of column O in Appendix C on page 238 for this group. The related group of *kitāb*s in the 1323/1905 Cairo edition is found in column B lines 24-33.

258. Specific cell coordinates within Appendix B will be used when one specific *kitāb* of one modern edition of the *Mudawwana* is being referred to for ease of reference.

*kitāb*s in Ibn Rushd's work which one would expect to see much earlier in the text given the order in which they fall in the other commentaries and the modern editions, similar to the situation above in al-Jubbī's commentary. Those *kitāb*s are *Kitāb al-Walāʾ waʾl-mawārīth, Kitāb al-ʿItq, Kitāb al-Makātib, Kitāb al-Tadbīr* and *Kitāb al-Ummahāt al-Awlād* (I-73 to I-77 of Appendix C). There must have been some reason why these books would appear together at this place in Ibn Rushd's rendering. Although not overwhelming as far as evidence is concerned, this group appearing together, but out of an expected order, would support the grouping of *kitāb*s in some form, again similar to the *rizma*s which Muranyi observed in the Moroccan manuscript. However, no consistent principle can be determined for any theme unique to the *Mudawwana*.

Although no consistent specific order of the *kitāb*s can be evidenced through the modern editions nor the commentaries, there does appear to be a general consistency concerning the *kitāb*s. Once one is familiar with the names of the *kitāb*s and reviews the editions and commentaries, patterns begin to emerge, and one expects to find particular *kitāb*s in a general area. One example of this is the group of *kitāb*s consistently found at the beginning of every single modern edition as well as of each commentary. These *kitāb*s include *Kitāb al-Wuḍūʾ* (ritual purity; sometimes entitled *Kitāb al-Ṭahāra* - purity), *Kitāb al-Salāt* (ritual prayer)*, Kitāb al-Janāʾiz* (burial rites), *Kitāb al-Ṣiyām* (fasting), *Kitāb al-Iʿtikāf* (seclusion in a mosque) and *Kitāb al-Zakāt* (lines 7-14 of Appendix C). Each of these subjects concern an individual's personal responsibility in religious duty towards Allāh, known collectively as *ʿibādāt* (rituals of Muslim law or pious practices).[259] None of them deal with relationships between individuals or within society. Rather they relate to the action of a

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259. This group of *kitāb*s was encountered earlier when discussing the frequency of Ibn al-Qāsim's name in the text (see above at the end of section 2.2.2 which begins on page 49) as compared with the frequency of Mālik's names (see above at the end of section 2.2.1 on page 46). For a fuller discussion of *ʿibādāt* see G. H. Bousquet, "ʿIbādāt," *Encyclopaedia of Islam, Second Edition* (Brill Online, 2013).

single person in order to fulfill the requirements understood under this particular religious framework. In works of *fiqh* and *ḥadīth*, the subject matter of *ʿibādāt* is always dealt with before that of *muʿāmalāt* (social relations or association with others). So the observation that this group of *kitāb*s appears first in the *Mudawwana*, itself, as well as in the commentaries, is in congruence with the wider practice of the day. Although a specific order of the *kitāb*s of the *Mudawwana* cannot be supported, the order of the *kitāb*s within the commentaries, and also the modern editions themselves, demonstrate that a general order was followed, with the beginning of the *Mudawwana* or any of these commentaries, always dealing first with the subject of *ʿibādāt*.

With the evidence presented, it is reasonable to conclude that some form of recognized organization, beyond that of just the *kitāb*, did exist at different points in time for those who were familiar with and made use of the *Mudawwana*. This consists of the use of *kurrāsa*s containing more than one *kitāb*, the ordering of *kurrāsa*s, *rizma*s, as well as the idea of *ʿibādāt* and *muʿāmalāt* creating forms of organization within the text. The order of these different units is not fixed across time periods or even across mediums, that is manuscripts or modern editions. There appears to be a general order of the *kitāb*s within the text, however a fluidity existed within that general scheme. This implies that the order of the *Mudawwana* as a large text was not fixed.

It cannot be assumed, from the evidence examined to this point, that the *Mudawwana*, by those who knew it, was conceived of as a singular textual unit, giving the sense of what we would call today a large book, as the *kurrāsa*s do not seem to have been bound together, nor was their order fixed. What exactly the *ʿulamaʾ* understood as the *Mudawwana* between the time of Saḥnūn and the end of the writing of the commentaries is rather elusive.What it meant in the minds of the copyists and readers is difficult to determine. The title pages themselves seem to provide further conclusive evidence for the independent nature of the

*kitāb*s of the *Mudawwana*. However, *kitāb*s were not completely independent, rather they seem to have functioned as semi-autonomous parts of something larger.

5.1.2. Combined and Divided *Kitāb*s

The unit of the *kitāb* appears to have some degree of flexibility. Some *kitāb*s, where the content deals with mainly one subject, are found in the form of a series of many *kitāb*s in one edition but in other editions the same content might be in either fewer *kitāb* divisions or found all together in one single *kitāb*. This is apparent when examining the names of the *kitab*s in the modern editions. (Refer to Appendix B on page 236 for this comparison.) One example of this is *Kitāb al-Ḥajj*. In the 1323/1905 edition, the 1994 Beirut edition and the Mecca edition this content appears in three different *kitāb*s: *Kitāb al-Ḥajj al-awwal* [9], *Kitāb al-Ḥajj al-thānī* [10], and *Kitāb al-Ḥajj al-thālith* [11]. In the Abu Dhabi edition this appears all in one part named simply *Kitāb al-Ḥajj* [9-11]. Deeper examinations demonstrate that the content between these different editions is the same. Another interesting example of this is *Kitāb al-Nikāḥ*, for in the 1323/1905 edition this is in six parts [21-26], in the Beirut and Mecca editions, it comes in three parts, *Kitāb al-Nikāḥ al-awwal*, *Kitāb al-Nikāḥ al-thānī* and *Kitāb al-Nikāḥ al-thālith*, but in the Abu Dhabi edition it consists of one part only, *Kitāb al-Nikāḥ*. Other examples of this include *Kitāb al-Ṣalāt* [2-3], *Kitāb al-Zakāt* [7-8], *Kitāb al-ʿItq* [36-37], *Kitāb al-Shufʿa* [79-80], *Kitāb al-Qisma* [81-82] and *Kitāb al-Waṣāyā* [83-84]. When considering the size of the *kitāb*s it is speculated that the reason why these divisions were originally created would likely concern the number of manuscript folios within one *kurrāsa*. Certainly amongst the modern editions there appears to be a policy on the part of the editor of the Abu Dhabi edition to collate all of the different parts of one subject matter into one single *kitāb*. For no *kitāb* in that edition references a *kitāb al-awwal* (first book of...) or *kitāb al-thānī* (second book of...). Maybe this is some form of modernizing organization on his part. It would seem most unlikely that the manuscripts—if there were any—upon which

this edition was based, had no secondary *kitāb* divisions of this nature, given the size that a manuscript *kurrāsa* would need to be in order to complete the text. For example *Kitāb al-Nikāḥ* itself has over 230 pages in the Abu Dhabi modern edition. However these divisions are merely divisions of convenience and do not affect the content of the *kitāb*s whatsoever.

Comparisons of these divisional discrepancies are not isolated to the modern editions. Although it may seem that divisions within a subject matter became fewer as time progressed, the opposite can be observed in CBL ms Ar 3006. In this manuscript, *Kitāb al-Shufʿa* appears as one single *kitāb* rather than being split into two as found in three of the four modern editions.[260] Again, this further supports the supposition that the *kitāb*s, as we see them now in the modern editions, were not fixed in their divisions, groupings or order.

Another form of combination or division of *kitāb*s involves situations where the content includes more than one primary subject. In situations like this, the title of the combined *kitāb* seems to include references to all parts, yet combined into one name. For example in the Beirut, Mecca and Abu Dhabi editions, *Kitāb al-Īlāʾ* [33] and *Kitāb al-Liʿān* [34] are separate books. Yet in the 1323/1905 Cairo edition, they appear together in one *kitāb* under the name *Kitāb al-Īlāʾ wa'l-liʿān* [33]. A similar situation concerns *Kitāb al-Walāʾ* [41] and *Kitāb al-Mawārīth* [42], which is how they appear in the Abu Dhabi edition, but the 1323/1905 Cairo edition has them combined as one under the name *Kitāb al-Walāʾ wa'l-mawārīth* [41-42]. Upon further investigation with the Beirut and Mecca editions, a more interesting observation suggests itself. For in these editions, not only are the subjects of two *kitāb*s named together in one *kitāb* title, but there is another *kitāb* title with just one of the subjects listed in it. So it appears that at one point the two *kitāb*s were amalgamated as one *kitāb*, but then separated later with their combined name not being revised. Both editions

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260. The title page for this *kitāb* attests to this. See CBL ms Ar 3006:69a. The Abu Dhabi edition is the only one of the four modern editions which has this appearing as a single *kitāb*.

have both a *Kitāb al-Walāʾ waʾl-mawārīth* [41], which contains only the content of the *Kitāb al-Walāʾ* of the Abu Dhabi edition, and they also have a separate *kitāb* entitled *Kitāb al-Mawārīth* [42], which has the same content as the *kitāb* by the same name in the Abu Dhabi edition. The joining of *kitāb*s and then their later separation would account for why these *kitāb*s occur in the Beirut and Mecca editions with a dual name and have the content of only one *kitāb*.

This curious scenario also occurs in a similar manner concerning *Kitāb Kirāʾ dūr wa araḍīn.* The two books are completely separated in the Abu Dhabi edition under two names, *Kitāb Kirāʾ al-dūr* [61] and *Kitāb Kirāʾ al-araḍīn* [62]. They are combined in the 1323/1905 Cairo edition under one joint name, *Kitāb Kirāʾ dūr wa araḍīn* [61]. The Beirut and Mecca editions both have one *kitāb* with the combined name, *Kitāb Kirāʾ dūr wa araḍīn* [61], which contains the same contents as the Abu Dhabi edition's *Kitāb Kirāʾ al-dūr,* but these two editions also have another separate *kitāb* entitled simply *Kitāb Kirāʾ al-araḍīn* [62] which is the same content as the *kitāb* in the Mecca edition of the same name. *Kitāb al-Ḥubus* [87] and *Kitāb al-Ṣadaqa* [88] demonstrate a similar situation. In the 1323/1905 Cairo edition they are separate *kitāb*s whereas amongst the editions of Beirut, Mecca and Abu Dhabi the content of *Kitāb al-Ḥubus* is found in a *kitāb* with the joint name of *Kitāb al-Ḥubus waʾl-ṣadaqa* [87], yet these three editions also have a separate *kitāb* entitled *Kitāb al-Ṣadaqa* [88] whose content reflects the *kitāb* of the same name in the 1323/1905 Cairo edition. It would be plausible that at some point, early on in the copyist tradition, these books had been copied together, and then later on, due to the size of the *kurrāsa*, the *kitāb*s were separated, but somehow the titles of the *kitāb*s were not changed to reflect the division. A similar circumstance concerns *Kitāb al-Luqaṭa waʾl-ḍawāl waʾl-ābiq* which occurs in the 1323/1905 Cairo edition as one *kitāb* [92-93], whereas in the other three modern editions it is found in two separate *kitāb*s entitled *Kitāb al-Luqaṭa waʾl-ḍawāl* [92] and *Kitāb al-Ābiq* [93]. It is

unlikely that the circumstances leading to these discrepancies will ever be proven. It does demonstrate the variation which exists amongst manuscript traditions with resulting variance amongst modern editions.

5.1.3. Subject Headings

In addition to *kitāb* titles, the content of the *kitāb*s in the text of the *Mudawwana* is further organized by the use of subject headings. These are divisions found within *kitāb*s which appear to divide topics. When they appear in the text, the subject headings generally summarize the scenario described in the initial question of that particular section, as the subject headings are almost always immediately followed by a question introduced by *qultu* (I said/asked). In the manuscripts examined, subject headings are most often set apart from the regular text by being centered and placed on their own line of the manuscript. In less frequent occurrences, the subject headings can be found in the middle of the text rather than on their own separate line. Regardless of location, all subject headings are written in larger script from the general text and are often written in a different colour of ink standing out from the main text. As subject headings vary significantly between and amongst manuscripts and modern editions, they will be dealt with more fully in section 5.2.3 concerning content observations on page 121.

5.1.4. Modern Editions

Modern editors make many choices in the publication of large texts. A useful feature of many modern editions is some form of a table of contents. Prior to the modern editions, indexing is not evidenced apart from the (unreliable) table of contents provided in the manuscript of al-Qāḍī ʿIyāḍ's commentary on the *Mudawwana*. This feature of the *Mudawwana* makes it much easier to locate a specific topic. Indexes in the modern editions are based on the subject headings.[261] These indexes are found at the end of the text within

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261. Although not included in this part of the study, it is significant to note the Mecca and Abu Dhabi editions

each volume, operating more on the level of a table of contents as the subject headings are listed under their *kitāb* titles in the order in which they occur in the text.

A structural decision made by modern editors of the *Mudawwana*, in addition to those divisions examined earlier, concerns the division of the larger text into bound volumes. Sometimes, smaller divisions are made creating parts to the text which are larger than a *kitāb* division, but smaller than a volume division. In the case of the 1323/1905 Cairo edition, the editor divided the larger text of the *Mudawwana* into 16 parts (*ajuzʾ*) which were divided amongst eight bound volumes (*mujallad*). Succeeding editions of the *Mudawwana* by other publishers did not follow these volume or part divisions.

When comparing the volume divisions of each of the four modern editions examined, it seems that none of the editors rely on each other in deciding where to make the division for each of their volumes. The offset re-reprint of the 1323/1905 Cairo edition is in six volumes, the Beirut edition in four volumes, the Mecca edition has nine volumes and the Abu Dhabi edition has eight. It appears to be a purely arbitrary division, likely based on a preferred number of pages within each volume, those being 400-500 for the 1323/1905 Cairo edition, 600 for the Beirut edition, 350 for the edition published in Mecca and 460-600 pages for that published in Abu Dhabi. In terms of the editor of the Abu Dhabi edition, the contents of one *kitāb*, namely *Kitāb al-Nikāḥ*, are split between the end of volume two and the beginning of volume three with no *kitāb* division.

By simply presenting the *Mudawwana* in a multi-volume textual format, the editors influence the reader's understanding of the nature of the text. If the manuscript is made up of

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both have much more advanced indexing of the *Mudawwana*. For example, the Mecca edition contains an index of Qurʾānic verses quoted and the volume and page number on which they can be found in the *Mudawwana*. There is also an index of *ḥadīth* in the text. Both of these are found at the end of volume nine. See Mālik b. Anas, *Mudawwana* Mecca, 3209-50. In addition to an index of Qurʾānic verses and *ḥadīth* found in the *Mudawwana*, the Abu Dhabi edition also includes a brief index of *fiqh* texts. All three of these indexes are located at the end of volume eight. Note that the index of *ḥadīth*, sayings and questions is almost six hundred pages long. See Saḥnūn, *Mudawwana* Abu Dhabi, 8:7-616.

multiple *kitāb*s each with its own cover, and each *kitāb* exists as a stand alone, the simple act of publishing these many *kitāb*s together in one edition gives a reader a new impression of the text. With a bound volume with multiple *kitāb*s included in it, the reader is given the impression that when authored, these *kitāb*s were meant to be bound together. If it may be said that Saḥnūn started something, his disciples added to it and copyists through the centuries have influenced its content and impact, then it can also be said that modern editors themselves have played a part in the reception of *al-Mudawwana al-kubrā* by creating the impression of a unified, single text, stemming all the way back to Saḥnūn, if not Mālik.

With a multi-volume text, the modern editors of the *Mudawwana* must decide on a name with which to refer to the *Mudawwana*. Since the first modern edition was published in 1323/1905, the text has been known as *al-Mudawwana al-kubrā*. The modifier, grand or great, is clearly a modern addition, as there is no evidence of this adjective anywhere in the history of the *Mudawwana* prior to 1905. As mentioned above in note 239 on page 93, there are other *Mudawwana*s and even others by the name *al-Mudawwana al-kubrā*, referring to the edited Ibāḍī *al-Mudawwana al-kubrā*. It is possible that the modern editors picked up the name from this text.

5.2. Content Observations

This next section will discuss content discrepancies which occur between manuscripts, commentaries and modern editions. In making observations of differences which occur between these witnesses of the *Mudawwana*, one must consider not only the occurrence of the variance, but the significance of that variance upon the composition or compilation of the *Mudawwana*.

5.2.1. Missing *Kitāb*s

A common type of variation is where content is found in one source or edition, but not in another. Of this type of discrepancy, the most prominent in terms of the *Mudawwana* is

where an entire *kitāb* is found in one edition, but not in another. The implication of this, of course, is that the contents of that book are not found in the edition missing its title. This is indeed the case concerning *Kitāb al-ʿAqīqa*, which is found in the Beirut and Abu Dhabi editions [16], but not in the 1323/1905 Cairo and Mecca editions. This absence in the 1323/1905 Cairo and Mecca editions provides significant evidence to support the theory that collectively the editors of the modern editions must have had access to more than simply one edition based on one manuscript. For if the editors of the Beirut, Mecca and Abu Dhabi editions only had access to the published 1323/1905 Cairo edition, then it would have been ludicrous that they would have added a *kitāb* with no original source. Given also the fact that *Kitāb al-ʿAqīqa* is an extremely short *kitāb*, only one page in length in the modern editions, this brevity does not mirror the length of any other *kitāb* in the *Mudawwana*. If an editor, for whatever reason, were going to attempt to attract more attention to their edition, even through scrupulous means with the best of intentions, they would most likely do it in a way which would appear most realistic. However, the length of *Kitāb al-ʿAqīqa* is so short that it does not support this possibility, but rather lends further evidence to its credibility as a legitimate *kitāb* in this collection from some manuscript traditions. It would appear that the modern editors, between them, had access to more than one manuscript tradition for the *Mudawwana*.

Concerning the commentaries and missing *kitāb*s, there are two issues which deserve mention. The first is that *kitāb* titles can be misleading, as it is not unusual for the same content to be referred to by different *kitāb* titles. There are three *kitāb*s listed in the commentaries which are not found within the *Mudawwana*. Two of these are found in the commentary by Ibn Rushd, namely *Kitāb al-Qasāma* (to swear by Allāh) and *Kitāb al-Jāmiʿ* (comprehensive/all-encompassing/gathering). Although *Kitāb al-Qasāma* is not specifically a *kitāb* in the *Mudawwana*, the subject is dealt with extensively in *Kitāb al-Diyāt*. Word searching in the *kitāb* confirms this. So it seems most likely that Ibn Rushd added this subject

to his commentary, making it a separate section. *Kitāb al-Jāmiʿ*, the last *kitāb* of his text, appears to be a *kitāb* about various aspects of Muḥammad's life, including his birth, his personal charateristics, his mother, his wives and even his names among other subjects. This is all material that does not seem to appear in any form in the *Mudawwana*. It seems to be a form of honor which Ibn Rushd is offering, in spite of the fact that it appears odd the material is not found in the *Mudawwana* when that is the specific aim of his commentary. A third *kitāb* which does not appear in the *Mudawwana* is one listed by al-Qāḍī ʿIyāḍ, specifically *Kitāb al-Radd biʾl-ʿayb* (the flawed response/reaction). This situation appears to resemble that of Ibn Rushd's *Kitab al-Qasāma*, for although in the modern editions there is no *Kitāb al-Radd biʾl-ʿayb*, the Beirut, Mecca and Abu Dhabi editions each have a *kitāb* entitled *Kitāb al-Tadlīs biʾl-ʿayūb* (pl. of *ʿayb*). The title of this *kitāb* in the 1323/1905 Cairo edition reads *Kitāb al-Tadlīs*. These *kitāb* title changes demonstrate that *kitāb* titles were not fixed by the time the commentaries were written.

A second issue concerning the commentaries and missing *kitāb*s is to note that several of the *kitāb*s found in the *Mudawwana* are not mentioned in some of the commentaries. No one commentary, of the five examined, has a *kitāb* of commentary on every *kitāb* of the *Mudawwana*. With a work as extensive as the *Mudawwana*, it does not seem odd that a *kitāb* or two or even five, for that matter, might be missed in a commentary. However, there are two *kitāb*s from the *Mudawwana* which do not appear in any commentary at all. Four of the *kitāb*s are not found in al-Barādhiʿī's commentary (*Kitāb al-Ḍaḥāyā, Kitāb al-Qaḍāʾ, Kitāb al-Daʿwā* and *Kitāb al-Rajm*), three *kitāb*s are absent in Ibn Rushd's text (*Kitāb al-Wakālāt, Kitāb al-Qaḍāʾ* and *Kitāb al-Daʿwā*), eight *kitāb*s are not mentioned al-Rajrājī's commentary (*Kitāb*s al-Ḥajj al-awwal, al-thānī and al-thālith, Kitāb al-Dhabāʾiḥ, Kitāb al-Qaḍāʾ, Kitāb al-Daʿwā, Kitāb al-Luqaṭa waʾl-ḍawāl waʾl-ābiq, Kitāb al-Ḥudūd fīʾl-zinā waʾl-qadhf waʾl-ashriba* and *Kitāb al-Ashriba*) and al-Qāḍī ʿIyāḍ's commentary does not deal with five of the

*kitāb*s (*Kitāb al-Tadlīs, Kitāb al-Qaḍāʾ, Kitāb al-Daʿwā, Kitāb al-Kafāla* and *Kitāb al-Rajm*).

Common to all four of them, *Kitāb al-Qaḍāʾ* and *Kitāb al-Daʿwā* are not part of any of their

reports. This is particularly curious, as these two *kitāb*s are found only as single *kitāb*s in all

of the modern editions, meaning they are not combined with another *kitāb*. Neither of these

*kitāb*s is presented anywhere as combined with any other *kitāb*, nor are their names found in

other forms. Although *Kitāb al-Qaḍāʾ* is not a lengthy text in itself, appearing as five to nine

pages in the modern editions, *Kitāb al-Daʿwā* is a substantial text of at least 21 pages of text.

It is not, therefore, an insignificant document relative to the length of the other *kitāb*s. Yet

neither of these *kitāb*s is listed by these four major commentators. In both the 1323/1905

Cairo and Beirut editions, *Kitāb al-Qaḍāʾ* is presented as a separate text, being given a

subject heading which reads *Kitāb al-Qaḍāʾ*, but not with its own separate title page. In both

cases it follows directly after the contents of *Kitāb al-Aqḍiya*. Therefore, it would seem

reasonable to believe that the contents of *Kitāb al-Qaḍāʾ* could be included within the text of

Kitāb al-Aqḍiya in the commentaries if some manuscript traditions brought the content of

these two texts together with no indication through the title of the *kitāb*. This is what appears

to be the case, as reading through the commentaries one discovers that the subject matter

dealt with in *Kitāb al-Qaḍāʾ* in the *Mudawwana* is indeed found in the commentaries under

Kitāb al-Aqḍiya. There must be a reason why these two subjects were understood by all of

the commentators to have belonged together in one *kitāb* whereas in the modern editions,

they appear under two separate *kitāb* titles. It seems more likely that two books which had

been separate *kitāb*s in the past would be combined together into one than to have one *kitāb*

split into two in a later period. However, the situation with the *kurrāsa*s of the manuscripts

investigated earlier (see section 4.2.1 on *kurrāsa*s and *kitāb*s, page 92) demonstrated the fluid

nature of some of the *kitāb*s in how they were joined together into one *kurrāsa* sometimes

with little reason evident.

The situation with *Kitāb al-Daʿwā*, though, is somewhat more difficult to resolve. For there is presently no evidence to support that it was part of another text. Its absence from the commentaries seems odd. One explanation could simply be that this *kitāb* did not garner much attention, or that it had little that needed any form of commentary. But this is not a convincing argument, given the vast nature of the *Mudawwana* and the volume of the commentary written about it. Every other subject, amongst these four commentaries, is dealt with in one way or another. It is possible that *Kitāb al-Daʿwā* was lost within some manuscript traditions, and at that point in time did not receive comment. But with four commentaries from authors of origins including Kairouan, the birthplace of the *Mudawwana*, as well as that of Andalusia, another major centre of Mālikī thought, it is difficult to believe that these subjects would not have been considered at one point or another. Perhaps it is simply coincidence that this *kitāb* is not mentioned by these writers. Possibly *Kitāb al-Daʿwā* was not formally considered a part of the *Mudawwana* until after the commentaries had been written. The reason for the absence of *Kitāb al-Daʿwā* in the commentaries may not be discovered.

A most interesting observation to conclude this look at the *kitāb*s of the *Mudawwana* not mentioned in commentaries on the *Mudawwana* is that Ibn Rushd includes in his commentary *Kitāb al-ʿAqīqa*, which is the one *kitāb* that does not appear either in the 1323/1905 Cairo or Mecca editions, but is found in the Beirut and Abu Dhabi editions. Ibn Rushd, in this relatively brief commentary, explains the meaning of *ʿaqīqa*—the sacrificial slaughter of an animal on the seventh day after the birth of a child—describes its background, as well as the support, or lack thereof, for the practice of *ʿaqīqa* by Muḥammad through the use of *ḥadīth*. From this, a rather modest conclusion is formed: concerning the relationship of this *kitāb* to the text of the *Mudawwana*, by 520/1126, the date of Ibn Rushd's death, the

content of *Kitāb al-ʿAqīqa* was firmly established in at least one manuscript tradition in the text of the *Mudawwana*.

5.2.2. *Kitāb* Titles

Variation in *kitāb* titles between modern editions, as well as involving manuscripts and commentaries, is quite common. Different forms of variation in *kitāb* titles is present, including words missing in the title between references, variations in words within a title, or different words altogether being used between two different documents.

In the 1323/1905 Cairo edition and Abu Dhabi edition, one *kitāb* is entitled *Kitāb al-Iʿtikāf* [6]. Both the Beirut and the Mecca editions present this as *Kitāb al-Iʿtikāf bi-ghayr ṣawm*, simply specifying that the pious activities discussed in this text are those other than fasting. Another example which demonstrates agreement between the 1323/1905 Cairo edition and the Abu Dhabi edition concerns *Kitāb al-ʿIdda wa ṭalāq al-sunna* [30], which appears in the Beirut and Mecca editions as simply *Kitāb Ṭalāq al-sunna* [19]. An unusual agreement exists between the three editions of 1323/1905 Cairo, Beirut and Abu Dhabi concerning the title of *Kitāb al-Ājāl* [47], which appears as *Kitāb Buyūʿ al-ājāl* [47] in the Mecca edition. *Kitāb al-Aymān biʾl-ṭalāq wa ṭalāq al-marīḍ* [31] appears as such only in the 1323/1905 Cairo edition, whereas the other three editions render it as *Kitāb al-Aymān biʾl-ṭalāq* [20]. The same three modern editions present *Kitāb al-Gharar* [51], while in the 1323/1905 Cairo edition it presents as *Kitāb Bayʿ al-gharar*. A similar occurrence involves *Kitāb Bayʿ al-murābaḥa* of the 1323/1905 Cairo edition [52], which is published by the other three editions simply as *Kitāb al-Murābaḥa* [50]. In the 1323/1905 Cairo edition one can find *Kitāb al-Tadlīs* [56], but in the Beirut, Mecca and Abu Dhabi editions one must look for *Kitāb al-Tadlīs biʾl-ʿuyūb* [56]. Among the *kitāb*s of the 1323/1905 Cairo edition one will find *Kitāb Bayʿ al-khiyār* [49], whereas in all three of the other editions, it is listed as *Kitab al-Bayʿayn biʾl-khiyār*. One final instance where additional words create discrepancies

between the editions involves *Kitāb al-Ḥudūd fī'l-zināʾ waʾl-qadhf* [95] which is how it appears in the Beirut, Mecca and Abu Dhabi editions. However the 1323/1905 Cairo edition, including the idea of wine or alcoholic beverages in the title as well, published it as *Kitāb al-Ḥudūd fī'l-zināʾ waʾl-qadhf waʾl-ashriba*. Simple differences like these can sometimes present further evidence not only of different manuscript traditions, but also indicate relationships that might exist between certain manuscripts when enough consistent variation occurs amongst them.

Manuscripts provide limited useful information when comparing *kitāb* titles due to their fragmentary nature. As mentioned previously (in section 3.1.13 beginning on page 71), the CBL manuscripts have a total of seven *kurrāsa* title pages amongst its folios. Of these seven, only one title page lists more than one *kitāb* as its contents. This *kurrāsa* contains *Kitāb al-Mudabbar waʾl-walāʾ waʾl-mawārīth waʾl-ansāb*. Both *Kitāb al-Mudabbar* and *Kitāb al-Ansāb* are not found anywhere in the names of the *kitāb*s of the modern editions of the *Mudawwana*. From the names known through the modern editions, it is possible that *Kitāb al-Mudabbar* (slaves manumitted following the death of the owner) is the same content as *Kitāb al-Tadbīr* (manumission by will/testament). In his commentary on the *Mudawwana*, al-Rajrājī lists *Kitāb al-Mudabbar* as one of the *kitāb*s in the *Mudawwana*. (See Appendix C.) The *verso* of the title page folio listing *Kitāb al-Mudabbar* has as its first subject heading "*fī ʾl-tadbīr*."[262] A comparison of the beginning of *Kitāb al-Tadbīr* of the modern editions of both Beirut and 1323/1905 Cairo confirm that it is the same subject matter as that found on folio 1b of CBL ms Ar 4835. This demonstrates that the name by which this *kitāb* was known was not necessarily fixed and a different form of the word was sometimes used in the title of the *kitāb*. Concerning *Kitāb al-Ansāb*, no *kitāb* from the modern editions seems to bear a title

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262. See CBL ms Ar 4835:1b.

somehow related to this, either in form or meaning. It is possible that *al-ansāb* is simply an

extension of the title *al-Walāʾ waʾl-mawārīth* (clientage and inheritances). Yet this word is

not associated with this *kitāb* in any of the modern editions, or in any of the commentaries

examined. It appears to be an aberration unique to this manuscript. Although the word *ansāb*

(genealogy) itself does not appear in the title of the *kitāb,* this subject matter is dealt with

fairly substantially within the *kitāb* from the modern editions known as *Kitāb al-Walāʾ waʾl-*

mawārīth. So it seems likely that this is just an extension of the title. A search for this word

within this *kitāb* reveals that in its plural form it occurs only twice, but in its singular form

(*nasab*) it occurs 38 times. Another *kitāb* within which this subject is dealt with on a large

scale is that of *Kitāb al-Ummahāt al-awlād,* where the word occurs 31 times. The title *Kitāb*

al-Walāʾ waʾl-mawārīth does exist in the modern editions. Unfortunately, due to the

incomplete nature of CBL ms Ar 4835, along with its unorganized collation, it is impossible

to verify whether *al-ansāb* was considered an extension of *Kitāb al-Walāʾ waʾl-mawārīth* or

if it was a separate *kitāb* of its own in this manuscript in its original form. It seems reasonable

to conclude that the title of this *kurrāsa* from the CBL ms Ar 4835 included the text which is

known in the modern editions as *Kitāb al-Tadbīr* and *Kitāb al-Walāʾ waʾl-mawārīth.* The

further addition of the name *al-ansāb* appears to indicate the content also deals with the

subject of *ansāb.* References to the subject matter of *kitāb*s by more than one name within the

same manuscript such as *al-Mudabbar* and *al-Tadbīr* in this particular case, provides further

evidence that the titles of the *kitāb*s were not fixed. As a *kitāb* from the *kurrāsa* is given a

name which does not appear in the modern editions, this adds further evidence that the names

and titles of the *kitāb*s were not fixed. It also seems apparent that the collecting of certain

*kitāb*s within a *kurrāsa* must also not have been fixed.

In addition to the manuscripts, the commentaries provide beneficial observations

concerning *kitāb* titles of the *Mudawwana.* All five commentaries provide some form of

commentary concerning *Kitāb al-Tijāra biʾl-arḍ al-ʿadūw* (commerce in the land of the enemy; cell B-56). This *kitāb* title is identical between the 1323/1905 Cairo edition and the Mecca edition. The Beirut and Abu Dhabi editions have a slightly different variation on the title—*Kitāb al-Tijāra ilā arḍ al-ʿadūw* (an insignificant change in meaning: with land of the enemy). Yet, all five of the commentators use the word *ḥarb* (war) rather than *ʿadūw* (enemy) in their title demonstrating consistency amongst the commentators and concurrence with the 1323/1905 Cairo edition and the Mecca edition. This evidence appears to demonstrate that between the time of the writing of the *kitāb*s, and the writing of the first of the commentaries, the name of this particular *kitāb* may have been fixed.

Ibn Rushd's commentary identifies some unusual names for some of the *kitāb*s. Like the other two commentaries, in the place of the expected *Kitāb al-Nudhūr al-awwal* (First book of vows) and *Kitāb al-Nudhūr al-thānī* (Second book of vows), Ibn Rushd lists this as one entitled *Kitāb al-Nudhūr waʾl-aymān* (vows and belief/faith). No modern edition cites this with the reference to *al-aymān*. Other *kitāb*s with a similar situation where the title is obviously related to a specific *kitāb* from the text of the *Mudawwana*, yet there is some change in the title of the *kitāb,* includes *Kitāb al-Tadlīs biʾl-ʿuyūb* (fraud by defects; modern edition) being rendered as *Kitāb al-ʿUyūb* (defects) and also the case of *Kitāb al-Muḥāribīn* (military soldiers; modern edition) appearing as *Kitāb al-Muḥāribīn waʾl-murtaddīn* (military soldiers and deserters). Al-Barādhiʿī's commentary has a comparable occurrence with the title *Kitāb Bayʿ al-gharar waʾl-mulābasa* (risky and dubious sales), *al-mulābasa* (dubious) not being found in any of the *kitāb* titles of the modern editions.

Al-Jubbī's order of books remains consistent with the text of the modern editions of the *Mudawwana* in the first section of the text as seen in the previous section on structure. His commentary, though, is the only one which includes the word *tafsīr* (meaning explanation or commentary) anywhere in its content, and this in the first *kitāb*—*Tafsīr Kitāb al-Wuḍūʾ*.

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This could explain why it needed an unusually large number of pages for al-Jubbī—13.[263]

Most of his other *kitāb* titles are known, with only a couple which are unfamiliar. In addition to dealing with *Kitāb al-Jirāḥāt*, al-Jubbī also includes a chapter entitled *Awwal al-Jirāḥ*. According to Lane's Lexicon, both of these words, *jirāḥāt* and *jirāḥ*, are plural forms of the same singular word, namely *jirāḥa*, meaning a wound, possibly incurred from an iron instrument.[264] It is possible that there were *kitāb*s which were considered part of the *Mudawwana* at the time that al-Jubbī wrote his text which are not available to us today in the modern editions, for example *Kitāb Awwal al-jirāḥ*. Muranyi also makes mention of a *Kitāb al-Jirāḥ* as being listed in a survey of works in the mosque library of Kairouan assumed to be part of Saḥnūn's *Mukhtaliṭa*.[265] Al-Jubbī's commentary may also be a possible reference to this source, although unlikely. It would seem more likely that the *kitāb* names to which al-Jubbī refers are different than those used by the modern editions. The discussion earlier in this section concerning the discrepancy between the manuscripts of the names of the *kitāb*s would support this. Further investigation into the vocabulary explained by al-Jubbī in *Awwal al-Jirāḥ* yields that the words found there, for the most part, are found in *Kitāb al-Jirāḥāt* of the 1323/1905 Cairo edition of the *Mudawwana*. It seems that al-Jubbī referenced *Kitāb al-Jirāḥāt* of the *Mudawwana* in two parts. No reason has yet surfaced as to why this is the case.

A second unknown *kitāb* mentioned by al-Jubbī is *Kitāb al-Khawārij*. The reference to this *kitāb* is found in a group of *kitāb*s together in one chapter entitled *Kitāb al-Muḥāribīn waʾl-murtaddīn waʾl-khawārij wa Kitāb al-Rajm*. As the word *kitāb* is found twice in the title, but there are four subjects, it would appear that al-Jubbī is dealing with what he

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263. Other *kitāb*s are dealt with by al-Jubbī in as few as one or two pages with two *kitāb*s needing six pages and the second largest being seven pages.

264. Lane, *Lexicon*, 1:405.

265. Muranyi is referencing Muḥammad al-Buhlī al-Nayyāl, *al-Maktaba al-athariyya biʾl-Qayrawān: ʿArḍ wa-dalīl* (Tunis: Manshūrāt Dār al-Thaqāfa, 1963), 28. See Muranyi, *Die Rechtsbücher*, 6.

understands to be simply two *kitāb*s. If such is the case, *al-khawārij* is considered a part of the subject matter dealt with in the one *kitāb* which also deals with the subjects of *al-muḥāribīn* and *al-murtaddīn*. Although a word search of the 1323/1905 Cairo edition in the text of *Kitāb al-Muḥāribīn* yields no occurrences of the word *al-khawārij* (rebels), another form of it, *kharaja* (to go out), is found there. Searches for references to cognates of the word *murtaddīn* (apostate), and the word itself, are unfruitful. However, a quick scan of al-Jubbī's short text shows that the unusual words he lists are indeed discussed in its pages. The titles of the *kitāb*s, as demonstrated here, show a high degree of inconsistency across different manuscript traditions.

These examples provide additional evidence that the titles for the *kitāb*s were not fixed, with commentators, between two and three centuries after the rise of the material, using varying names to refer to the same *kitāb*s.

5.2.3. Subject Headings

Relative to the number of discrepancies between *kitāb* titles, subject headings vary enormously in documents of the *Mudawwana*. As subject headings are the backbone of indexing in the modern editions of the *Mudawwana*—each modern edition provides them in their index—data abounds. Indexes make the task of comparing subject headings between different modern editions a fairly simple task. Yet these comparisons are also very time consuming due to the high rate of variation among them. In the manuscripts, subject headings are always set apart from the main text in one way or another, making it easier to see them and creating a separation from one subject to another. They are often centered on a line alone. Sometimes in the BL ms Or 6586, even though they are set apart from the main text and centered on the line, the beginning and the end of the line can have some additional script as well. Often, but not always, the subject headings in manuscripts are larger script than the common text, and the ink is often a different colour from that used in the main text. (See

figure 5 below on page 127 for an example from CBL Ar 4835.)[266] This formatting also assists the comparison of subject headings between manuscripts and modern editions. There is no consistency within a single edition of the *Mudawwana* concerning the formulas used at the beginning of subject headings let alone consistency between the various modern editions. Given the inconsistent nature of the introductory phrases, as well as the variation within one edition, it seems most likely that these subject headings were added at various times in the passage of the text from one scribe to the next. It seems most certain that subject headings were not conceived of concurrent with the text itself otherwise much greater consistency would be expected amongst them.

Found at the beginning of the subject headings amongst the different manuscripts are the following words and phrases: *fī* (about), *fīmā* (with regard to/with respect to/while), *bāb* (chapter), *al-rajul* (the man), *fī ʾl-rajul* (about the man). An example of the variance across modern editions, subject headings in the Beirut edition often begin with the phrase *mā jāʾa fī*[267] yet this is often absent altogether in the 1323/1905 Cairo edition,[268] with the BL ms Or 6586 often reading simply *fī*.[269] There are examples of this trend being the reverse, though.[270]

A comparison of the subject headings found in the manuscripts and those in the modern editions reveals that there are discrepancies, sometimes significant, with the modern editions. In BL ms Or 6586, *Kitāb al-Īlāʾ*, found in *kurrāsa* 20, is one of the few *kitāb*s which

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266. For more on the presentation of subject headings, refer to section 5.3.4 below on page 176.

267. See Saḥnūn, Mudawwana Beirut, 3:565:6, 3:566:7, 12 and 20.

268. In the 1323/1905 Cairo edition, the first of these subject headings begins without this phrase, see Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 5:6:3. In the second example, the subject heading is absent altogether, see Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 5:7. Regarding the third example, the 1323/1905 Cairo edition text introduces the subject heading with simply the word *fī*, see Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 5:8:1. Concerning the fourth example, *mā jāʾa fī* is again completely absent in the subject heading. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 5:8:9.

269. In the BL ms Or 6586, in all four of the instances mentioned, the subject headings are introduced with simply *fī*. See BL ms Or 6586:37a:6, 37b:11,15 and 24.

270. See for example *Kitāb al-Ābiq* in BL ms Or 6586:50b:5 and Saḥnūn, *Mudawwana* Beirut, 4:463:9.

does not have any subject headings.[271] Subject headings are not present in either the Beirut or

Mecca modern editions for *Kitāb al-Īlāʾ*, but they are found in the 1323/1905 Cairo and Abu

Dhabi editions.[272] The 1323/1905 Cairo edition also puts this *kitāb* and the next one, *al-Liʿān*,

together into one *kitāb*. None of the other modern editions, nor the BL ms Or 6586, put these

two *kitāb*s together into one. As explored earlier concerning the grouping of *kitāb*s into

*kurrāsa*s, in section 5.1.1 on page 92, it is possible that in one manuscript tradition these

*kitāb*s were combined by a scribe beginning a new collation tradition with that compilation.

Apart from this particular *kitāb*, where subject headings do not exist in the Beirut

edition, many of the subject headings in the BL ms Or 6586 correspond with both the

1323/1905 Cairo and Beirut editions. However, there are some instances where it corresponds

fully with the 1323/1905 Cairo edition but not the Beirut edition. For example, at the

beginning of *Kitāb al-Musāqāh*, the first subject heading in the 1323/1905 Cairo edition

reads *al-ʿamal fī ʾl-musāqāh*.[273] This corresponds with the manuscript.[274] However, the Beirut

edition reads *fī ʾl-musāqāh wa mā yajūzu fī istithnāʾ al-bayāḍ*.[275] This reading of the Beirut

edition agrees with the first subject heading in both the Mecca and Abu Dhabi editions.[276] So

in this instance, the BL ms Or 6586 agrees with the 1323/1905 Cairo edition but not the other

three modern editions. Another example within the same *kitāb*, *al-Musāqāh*, there is a subject

heading in the manuscript which reads *fī ʾl-musāqāh sanīn*,[277] which is found in the Beirut,

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271. See BL ms Or 6586:1-11.

272. Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 3:84-120. Saḥnūn, *Mudawwana* Beirut, 2:336-351. Mālik b. Anas, *Mudawwana* Mecca, 3:1049-1064. Saḥnūn, *Mudawwana* Abu Dhabi, 3:446-470.

273. Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 5:2.

274. See BL ms Or 6586:34b.

275. Saḥnūn, *Mudawwana* Beirut, 3:562.

276. See Mālik b. Anas, *Mudawwana* Mecca, 5:1807. See also Saḥnūn, *Mudawwana* Abu Dhabi, 5:477.

277. See BL ms Or 6586:41a:2.

Mecca and Abu Dhabi editions, but it is not found in the 1323/1905 Cairo edition.[278] So in

this particular case, the content of three of the modern editions corresponds with that of the

BL ms Or 6586, but the subject heading is not found in the 1323/1905 Cairo edition. This

could be due to either it not being present in the manuscript upon which the 1323/1905 Cairo

edition is based, or the editor could have neglected to include this in the copy of the

1323/1905 Cairo edition. These are not the only examples of this type of inconsistency found

in *Kitāb al-Musāqāh* between BL ms Or 6586 and the 1323/1905 Cairo and Beirut modern

editions. Another instance occurs where a subject heading is found in both the Beirut edition

and the BL ms Or 6586, but is not found in the 1323/1905 Cairo edition.[279] The subject

heading reads: *musāqāt al-arḍ sinīn ʿalā an yaghrisahā wa yaqūma ʿalayhā.* There are also

examples where there is correspondence between the modern editions of 1323/1905 Cairo

and Beirut but a discrepancy with the BL ms Or 6586. For example in this same area of the

text, another subject heading is present which reads *tark al-musāqāh* in both the Beirut and

1323/1905 Cairo editions, but in BL ms Or 6586 it reads *fī tark al-musāqī al-musāqāh.*[280]

Another example demonstrates correspondence between the 1323/1905 Cairo edition and the

BL ms Or 6586 but not with the Beirut edition. There is a subject heading which reads *jidād*

al-nakhl wa-ḥiṣād zarʿ al-musāqāh,[281] but in this section of the text it is not found in the

Beirut edition.[282]

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278. Compare Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 5:13 and Saḥnūn, *Mudawwana* Beirut, 3:570 and Mālik b. Anas, *Mudawwana* Mecca, 5:1816 and Saḥnūn, *Mudawwana* Abu Dhabi, 5:493.

279. See Saḥnūn, *Mudawwana* Beirut, 3:570:18 and see Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 5:13:4 and see BL ms Or 6586:40a:5-6

280. See Saḥnūn, *Mudawwana* Beirut, 3:570:25 and see Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 5:13:9 and see BL ms Or 6586:41a:10.

281. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 5:6:13 and see BL ms Or 6586:37a:17.

282. Saḥnūn, *Mudawwana* Beirut, 3:565:16.

Errors in subject headings are not confined to only one *kurrāsa* in this manuscript. *Kurrāsa* 40 of BL ms Or 6586 contains the text of *Kitāb al-Sharika*. There appears to be a scribal error when it comes to the fifth subject heading of this *kitāb*. Each of the four modern editions agrees with the subject heading which reads (*fī*) *al-rijāl yaʾtī aḥadahum biʾl-bayt waʾl-ākhir biʾl-raḥā waʾl-ākhir biʾl-baghl. . .*[283] However, this manuscript reads *fī ʾl-rijāl yaʾtī aḥadahum biʾl-bayt waʾl-ākhir biʾl-bayt waʾl-ākhir.*[284] Note that the word *biʾl-bayt* is copied twice, whereas the word *biʾl-raḥā* is not present in the manuscript copy. This seems like a typical case of the scribe copying the word *biʾl-bayt* twice when it should only have been used once due to the word *waʾl-ākhir* being found twice in the text.[285] Of course, it is possible that a previous copyist made this error and the scribe responsible for this manuscript simply repeated the error. This error should not be considered textual, but rather simply noted as a scribal error. For an error of this sort to occur in a subject heading leads one to doubt the accuracy of the scribe and thus the reliability of the manuscript itself. Further investigation, though, reveals that there are few errors of this sort. Such a rash conclusion would be unreasonable.

If subject headings were added at a later time, as seems very possible given observations of the manuscript itself, then the inaccuracy of the subject headings may have no reflection at all on the accuracy of the other content of the *Mudawwana* within the manuscript. The observations of this manuscript support the conclusion that the text of the *Mudawwana* and the subject headings were handled independently and may very possibly

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283. Compare Saḥnūn, *Mudawwana* Beirut, 3:596 and Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 5:45 and Saḥnūn, *Mudawwana* Abu Dhabi, 5:539 and Mālik b. Anas, *Mudawwana* Mecca, 6:1845.

284. BL ms Or 6586:54b:7

285. Although not exactly the same as the scribal error termed *saut du même au même*, this is a very similar type of error. See Gacek, *Vademecum*, 234.

have developed independent of each other. It is likely that the subject headings were a (much) later addition to the text of the *Mudawwana*.

Marginal notations are also used in order to correct errors in subject headings within a manuscript. An example of this is seen on folio 55a of CBL ms Ar 4835. The subject heading near the middle of the folio reads, *al-qaḍāʾ fī tark taḍmīn al-ṣunnāʿ mā talaffa bi-aydayhim*, with the word *idhā* added by a different pen, but likely the same hand, just beside the final word. Then, just a little further into the margin, and slanted at an acute angle with the line of the subject heading, these words can be found: *aqāmū ʿalayhi al-bayyina*.[286] See figure 5 below on page 127 for an image of this folio. The 1323/1905 Cairo edition reads *tarak taḍmīn al-ṣunnāʿ mā yatalafa fī aydīhim idhā aqāmū ʿalayhi al-bayyina*.[287] So it appears that what was in the margin of the CBL manuscript is a part of the main text in the 1323/1905 Cairo edition but with the variance in a verb and the following preposition. Yet a slightly different reading comes from the Beirut text, rendered, *al-qaḍāʾ fī tark taḍmīn al-ṣunnāʿ mā yatalafa bi-aydayhim idhā aqāmū ʿalayhi al-bayyina*.[288] Here the verb agrees with the 1323/1905 Cairo edition and the preposition agrees with the CBL manuscript. Although this may be a simple scribal error, it provides additional evidence that a multitude of discrepancies exist between manuscripts of the *Mudawwana* and the modern editions.

Subject heading comparison between two modern editions yields an overwhelming number of observations. Numerous comparisons between the 1323/1905 Cairo edition and the Beirut edition demonstrate discrepancies between these two editions. A good example is provided in *Kitāb Ṭalāq al-sunna* [19]. It should be underlined again though, that this particular *kitāb* goes by a different name between the 1323/1905 Cairo and Beirut editions,

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286. See CBL ms Ar 4835:55a:9.

287. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 4:391:9.

288. See Saḥnūn, *Mudawwana* Beirut, 3:403:19.

referred to as *Kitāb Ṭalāq al-sunna* in the Beirut edition whereas in the 1323/1905 Cairo edition it is known as *Kitāb al-ʿIdda wa ṭalāq al-sunna* [30]. In this *kitāb* there are 14 subject headings found in the Beirut edition which are not found in the 1323/1905 Cairo edition at all.[289] In two cases, words in the subject headings between
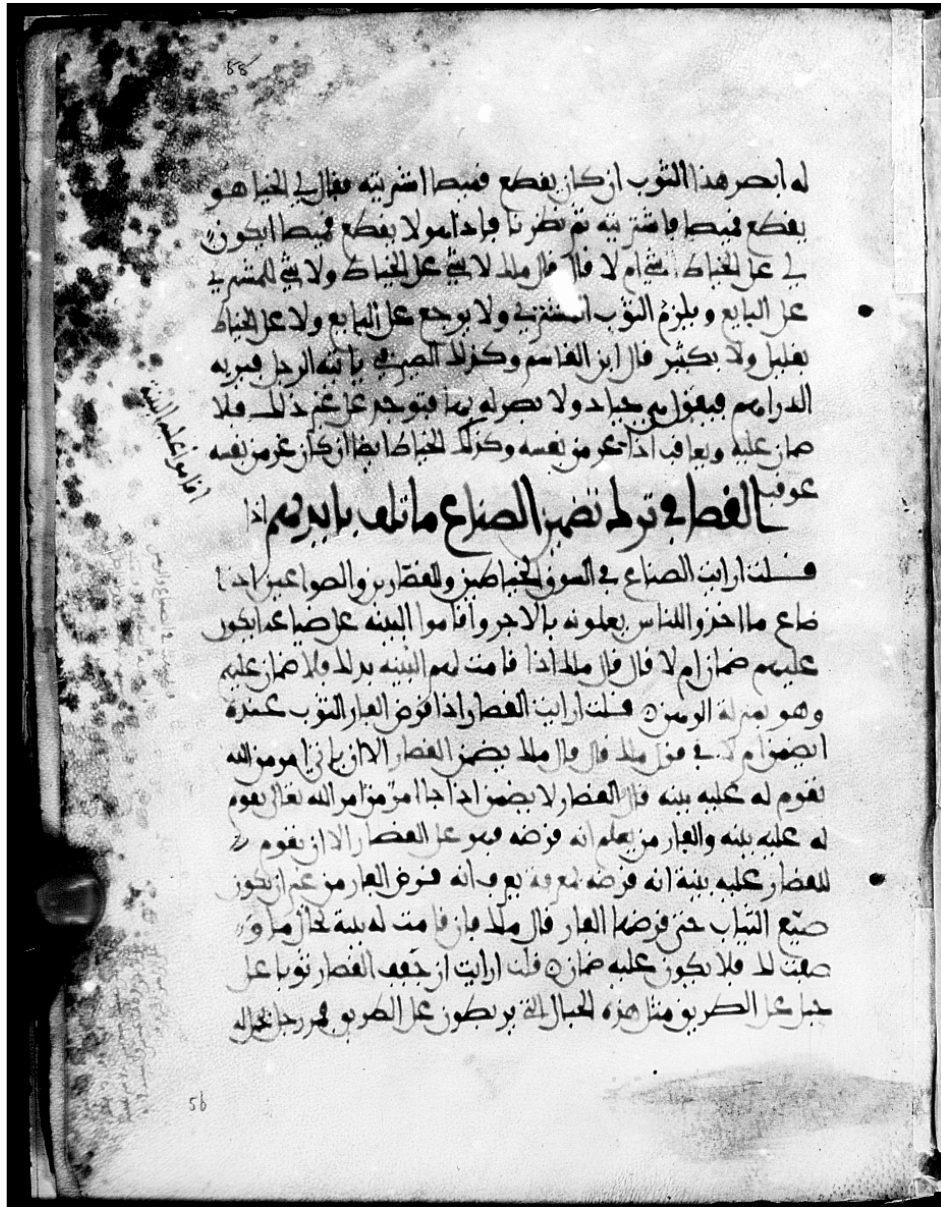
Figure 5. CBL ms Ar 4835:55a. Marginal notation correcting a subject heading. By permission of the Chester Beatty Library.

289. The 14 subject headings are absent from the following pages of the 1323/1905 Cairo edition, all from volume 2: 421, 422, 427, 428, 430, 432, 438 (x2), 455, 471, 472, 473, 478 and 480. The corresponding pages in the Beirut edition where the subject headings do occur, in volume 2, are 5, 6, 10, 11, 13, 14, 19 (x2), 34, 48, 49, 50, 54 and 56.

both editions are inverted.[290] In one case the subject heading in the 1323/1905 Cairo edition is lengthier than that in the Beirut edition.[291] However, in thirteen situations, it is the reverse, where the Beirut edition has a lengthier subject heading than that of the 1323/1905 Cairo edition.[292] Although the subject headings could have been added to the text of the various *kitāb*s at a relatively late date, the extensive discrepancies in the subject headings between the 1323/1905 Cairo and Beirut editions supports the idea of an additional underlying textual source for the editor of the Beirut edition. If a different source text was available to the editor of the Beirut edition, it would explain the profusion of discrepancies which occur between the Beirut edition and the 1323/1905 Cairo edition.

Another random difference in this same *kitāb* seems curious as it also involves the subject heading just prior to the difference. The Beirut edition begins one section with the subject heading,

"في المطلقة يختلط عليها الدم"[293]

The 1323/1905 Cairo edition does not include a subject heading at this point in the text. A question immediately follows this subject heading which begins in the Beirut edition as *a-raʾayta al-muṭallaqa idhā*. In the 1323/1905 Cairo edition the beginning of the question reads *a-raʾayta al-marāʾa idhā*, using the word *al-marāʾa*. The Beirut edition uses the word *al-muṭallaqa* in the question demonstrating consistency with the subject heading and the text by the use of this word in both places.[294] This evidence would suggest the possibility that a

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290. Compare the 1323/1905 Cairo edition 2:424 with the Beirut edition 2:7 and also the 1323/1905 Cairo edition 2:481 with the Beirut edition 2:57.

291. Compare the 1323/1905 Cairo edition 2:450 with the Beirut edition 2:30.

292. Some of these subject headings are extensively longer, including more than just a word or two. Compare the 1323/1905 Cairo edition, volume two, pages 424, 430, 434, 445, 447, 448, 451, 454, 456, 461, 464, 474 and 479 with the Beirut edition volume two pages 8, 12, 16, 23, 31, 40 (x2), 43, 47, 51, 56 and 57.

293. See Saḥnūn, *Mudawwana* Beirut, 2:11:1.

294. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 2:428:9.

change occurred in the reading of the text prior to the addition of the subject headings of the source for the Beirut edition, due to the consistent use of the word in the Beirut edition. However, it is also possible that the wording in the Beirut edition is that which was originally intended, and the 1323/1905 Cairo edition has been changed at some point in the recitation, copying or transmission process. An even further, difficult to substantiate, speculation would be that there was no fixed text and both readings are considered accurate. If the lessons through which the *Mudawwana* was conveyed were oral, it is possible that the teacher recited the text at one time using one of the words and then changed it in another session. This seems unlikely though, as, if this were a possible occurrence, it is likely there would be many more discrepancies similar to this in the text than are currently found. Another possible solution to resolve the discrepancy is that a scribe may have added an additional word in the margin as an explanation, only to have a later scribe substitute this word in the text itself replacing the original word. Regardless of when the subject headings were added to that source, the text would have been fixed by either edition before the addition of the subject headings, as the subject headings here demonstrate correspondence with the text.

Although it is more frequent to see additional subject headings in the Beirut edition which are absent in the 1323/1905 Cairo edition, such as in *Kitāb* (*al-ʿIdda wa-*) *Ṭalāq al-sunna*, the opposite is the case concerning *Kitāb al-Īlāʾ waʾl-liʿān* [33, 34]. In this instance there are fifteen subject headings found in the 1323/1905 Cairo edition which are absent in the Beirut edition.[295] As previously observed the Beirut edition separates what appears as one *kitāb* in the 1323/1905 Cairo edition as *Kitāb al-Īlāʾ waʾl-liʿān* into two separate *kitāb*s, *Kitāb al-Īlāʾ* and *Kitāb al-Liʿān*. However, in the 1323/1905 Cairo edition, at the beginning of the content which is a part of *Kitāb al-Liʿān* in the Beirut edition, there is a separation the

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295. For these subject headings see Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 3:85, 86, 87, 88, 89, 90, 91, 92, 93 (x2), 94, 95, 98, 101 and 103.

equivalent of a subject heading. This subject heading includes a *basmala* as well as a subject heading for the next section. However it does not say that this is now the beginning of *Kitāb al-Liʿān*. If it were supposed that the Beirut editor merely added subject headings in *Kitāb Ṭalāq al-sunna* where he believed they should be included, then it would be curious as to why subject headings do not appear in the Beirut edition of *Kitāb al-Liʿān*.[296] This discrepancy adds more evidence to the possibility of an underlying textual source for the Beirut edition other than that used by the 1323/1905 Cairo edition.

The matter of subject headings provides clear examples of variations between manuscripts and modern editions of the *Mudawwana*. The variations between the manuscripts and the different modern editions are not consistent. Within one *kitāb* of the *Mudawwana*, consistent variations may occur to a point with one or more modern editions. Yet later in the same *kitāb*, it is entirely possible that the consistency in variations changes and the textual variations between the manuscript and a different modern edition becomes consistent. The inconsistent variation that occurs with subject headings makes a very strong case for the introduction of subject headings later than the text of the *Mudawwana* itself. It could possibly have been a development that did not occur until the time of the writing of the first commentaries. The inconsistency between subject headings may also support the supposition that they were introduced at varying times for different *kitāb*s. The examination of older manuscripts in North Africa, currently unavailable for research, may in the future help to shed light on the development of these textual aids.

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296. The Abu Dhabi edition of the *Mudawwana* includes the subject headings as found in the 1323/1905 Cairo edition, whereas the Mecca edition, like the Beirut edition, does not include subject headings. See Saḥnūn, *Mudawwana* Abu Dhabi, 3:416-445. See also Mālik b. Anas, *Mudawwana* Mecca, 3:1049-1064.

5.2.4. Discrepancies of Textual Content

5.2.4.1. Between manuscripts and modern editions

Access to manuscripts allows for the examination of possible content variations between the modern editions of the *Mudawwana* and earlier sources. Discrepancies which exist between BL ms Or 6586 and the modern editions of the *Mudawwana* are too many to present them all in this research. The following example will demonstrate one type of difference present between them. In *Kitāb al-Musāqāh*, at the beginning of the subject entitled *musāqāt al-thamar alladhī lam yabdu ṣalāḥahu*, the text in the Beirut edition reads, *qultu: a-raʾayta in kāna fī ruʾūs al-nakhl thamar lam yabdu ṣalāḥuhu, wa-lam yaḥill bayʿuhu*.[297] Notice here the word *lam* occurs twice in this sentence. In the 1323/1905 Cairo edition, the text here reads, *qultu in kāna fī ruʾūs al-nakhl thamar lam yabdu ṣalāḥuhu*,[298] seeming to cut off a phrase at the end, with *lam* occurring only once in the 1323/1905 Cairo edition. Yet the text of the BL ms Or 6586 at this point reads, *qultu a-raʾayta in kāna fī ruʾūs al-nakhl thamar lam yaḥill bayʿuhu*.[299] Again, as in the 1323/1905 Cairo edition, *lam* occurs only once here, but the phrases which follow in both the 1323/1905 Cairo edition and that of the BL ms Or 6586 are different from each other. Those familiar with the copying of texts will immediately recognize that in the case of the manuscript, it is possible that this is simply a case of the scribe copying what follows the second occurrence of the word *lam* after the first occurrence and therefore the phrase in between these two occurrences, *yabdu ṣalāḥahu, wa-lam*, drops from the text.[300] However, this would not explain why the texts of the Beirut edition and the 1323/1905 Cairo edition differ from each other. Rather it would appear that

297. Saḥnūn, *Mudawwana* Beirut, 3:566:1-2.

298. Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 5:7:5.

299. See BL ms Or 6586:37b:6.

300. This type of error is another example of what Gacek describes as *saut du même au même*. See Gacek, *Vademecum*, 234.

either a phrase has been dropped out of the 1323/1905 Cairo text manuscript tradition at some point, or that a phrase was added to the Beirut manuscript tradition. The former possibility is more likely, as having a phrase drop out through copying is much more reasonable than having a copyist at some point create or add a phrase within the text. Whatever the reason was for this discrepancy between these two textual traditions, it appears that they each come from a different source. The idea of differing sources for the modern editions will be further explored later through a comparison of the modern editions of the 1323/1905 Cairo edition and the Beirut edition. *Kurrāsa* 37 from the BL ms Or 6586 reveals discrepancies between itself and the Beirut edition and the 1323/1905 Cairo edition prompting a further inquiry regarding the consistency of the texts between these two modern editions.

5.2.4.2. Heffening study

In 1937 Heffening published an article in *Le Muséon* which demonstrates discrepancies between a manuscript fragment of the *Mudawwana* and two modern editions.[301] The manuscript fragment is held in the Leuven University Library under the identification of Fonds Lefort Série B, and the modern editions used were the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition of the *Mudawwana*. Although Heffening's article describes several folios in five different groups within this collection, it is the description of discrepancies which he found between one group in this collection (B5, consisting of 26 folios) and the same passage within the text of the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition which were the focus of his research. Heffening's study will be reviewed, and further research based on his findings will assist in understanding the nature, not only of discrepancies between the manuscript and modern editions, but also between modern editions themselves and their source text. The passage concerned is found in *Kitāb*

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301. See Heffening, "Islamischen Handschriften." The specific study which is referred to below is on pages 92-95.

al-Waṣāyā al-thānī and starts near the beginning of the section with the subject heading *fī ʾl-rajul yūṣī an yuḥajja ʿanhu* according to the Cairo 1323/1905 edition[302] and *fīman awṣā an yuḥajja ʿanhu* according to the Beirut edition.[303] This corresponds with the 1323/1905 Cairo edition in volume 6 on page 58 at line 14 and the Beirut edition in volume 4 on page 366 beginning at line 21. One of his conclusions, given the quantity and also the quality of the discrepancies, was that that the *Mudawwana*, 200 years after the time of Saḥnūn, was a "*heillos verworrene textliche Überlieferung*."[304] In attempting to analyze Heffening's conclusion concerning the hopeless nature of the textual tradition, Appendix D provides not only the discrepancies which Heffening described in his poorly formatted findings, but also expands on those by providing the textual equivalents in all instances for the modern editions from Beirut, Mecca and Abu Dhabi. Upon inspection of these results, it can be seen that in almost every instance where a discrepancy occurs, the text of the 1324/1906-07 edition of the *Mudawwana*, according to Heffening, is precisely the same as that of the 1994 Beirut edition.[305]

There are 60 instances of discrepancies in the passage of approximately eight pages of text. The discrepancies which exist between the manuscript and the modern editions which Heffening discovered demonstrate the high degree of variance which exists between the two modern editions he consulted. Heffening's research, in that respect, confirms what has been observed, and will be further demonstrated below, that inconsistencies abound between the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition. In this section, though, what is

302. 6:58:7

303. 4:366:14

304. Heffening, "Islamischen Handschriften," 96.

305. In examining these discrepancies, it is important to note that the presence of diacritical markings (*ḥamza*, dotted *yāʾ*, *tashdīd* and *tanwīn*) are different from one period to another. The absence or presence of these markings is not considered as a discrepancy, as when they are absent in the text their presence is assumed but it was not the practice of the day to include them in a manuscript or print edition.

of interest is the correspondence which exists between Heffening's "B", which is the 1324/1906-07 Cairo edition of the *Mudawwana,* and the 1994 Beirut edition. Further research, founded on Heffening's findings and then further supplemented by consulting the other three modern editions—Beirut, Mecca and Abu Dhabi—has demonstrated significant correspondence between the 1324/1906-07 Cairo edition and the Beirut edition. Heffening listed 60 discrepancies between the manuscript and the two editions he consulted. Of the 60, in only two cases do the Beirut text not match exactly with the 1324/1906-07 edition as cited by Heffening.[306] The consistency which occurs between the 1324/1906-07 Cairo edition and the Beirut edition leads to the speculation that the Beirut edition is based on the 1324/1906-07 Cairo edition.

The two discrepancies which occur between the 1324/1906-07 Cairo edition and the Beirut edition are as follows:

1. A fairly lengthy phrase in the "B" edition reads

<div dir="rtl">

"وأرى ان دفعوا ذلك الى عبد او صبى أن يضمنوا ذلك"[307]

</div>

whereas in the Beirut edition it reads:

<div dir="rtl">

"وأرى إن دفعوا ذلك إلى عبد أوصى أن يضمنوا ذلك"[308]

</div>

Note that the difference between the two is in او صبى in the 1324/1906-07 Cairo edition and أوصى in the Beirut edition. The quotation is taken from a dialogue between (presumably) Saḥnūn and Ibn al-Qāsim, with this being the reply from Ibn al-Qāsim. In order to appreciate the difference between the two texts, it would be important to see the

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306. These cases correspond with Heffening's 92:3 and 95:6. See Appendix D for more detail of the discrepancies.

307. Heffening, "Islamischen Handschriften," 92 example 3.

308. Saḥnūn, *Mudawwana* Beirut, 4:366:27.

conversation in context, as the reading of this word(s), either أوصى or صبى او is dependent

on the reading of the question in the previous sentence. The Beirut edition and the

1323/1905 Cairo edition will be used for comparison, as the 1323/1905 Cairo edition is

consistent here with the 1324/1906-07 Cairo edition containing the same variation. In

context, the passage, in the Beirut edition reads:

"قلت: وهل يجوز أن يدفعوا إلى عبد أوصى ايحج عن الميت في قول مالك؟ قال: لم أسمع من مالك فيه

شيئاً، ولا أرى أن يجوز، وأرى إن دفعوا ذلك إلى عبد أوصى أن يضمنوا ذلك إلّا أن يكون عبداً ظنوا أنه

حر ولم يعرفوه واجتهد الدافع"[309]

Whereas in the 1323/1905 Cairo edition the same passage reads:

"قلت وهل يجوز أن يدفعوا الى عبد أو الى صبىّ أن يحج عن الميت فى قول مالك (قال) لم أسمع من مالك

فيه شيئاً ولا أرى أن يجوز وأرى ان دفعوا ذلك الى عبد أو صبىّ ضمنوا ذلك الا أن يكون عبداً ظنوا أنه حرّ

ولم يعرفوه واجتهد الدافع"[310]

Although this may appear as a rather complicated situation, it is really dependent on

the reading of the text in the earlier part. The question and the answer must have

consistency between them. It is interesting that Heffening does not point out an

inconsistency between the texts in the question part of this exchange, but only in the

response of Ibn al-Qāsim. The text of the 1324/1906-07 Cairo edition varies here.[311] One

wonders if this was an oversight on his part, which seems the most likely in this situation.

The topic being discussed, according to the subject heading, is who can be commissioned/

charged/entrusted/requested/obligated to perform the *ḥajj* on behalf of someone else. The

question that arises for the inquirer is whether or not a child or a slave can (be obligated

309. Saḥnūn, *Mudawwana* Beirut, 4:366:25-28.

310. Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 6:58:18-21.

311. See Appendix D, page 241.

to) perform the *ḥajj* on someone else's behalf. Note that neither a child nor a slave is obligated by Islamic law to perform the *ḥajj*. It appears that in the explanation, the speaker indicates that the only way that this can be possible is if it could be known that the slave indeed will become a free man. However, since it cannot be known in advance whether or not he will be free in the future, it is not permissible until that point to obligate/allow him to perform the *ḥajj* on behalf of someone else. The discrepancy lies in whether or not the word(s) should be read as "child" (*ṣabiyy*) or the noun of "entrust/ obligate" (*awṣā*). So the question now becomes, which of these two readings is the preferable reading? Both readings, from the context, seem to be possible, as the text earlier speaks of both young men (*ṣabiyy*) and the concept of entrusting (*waṣaya*) is part of the main thought of the passage. It appears, though, that in reading the passage in greater context, the reading of the 1323/1905 Cairo edition seems preferable. It is interesting to note how the misreading of a single letter can result in a new reading, which, although not original, can still be seen as somewhat reasonable given the context. If the 1324/1906-07 Cairo edition of the *Mudawwana* is the base text for the Beirut edition, the only reasons that could be acceptable for this discrepancy would be either an editorial correction or a typesetting error in the Beirut edition. Otherwise it could not be explained as to why these two texts differ in this instance.

2. The second discrepancy involves the absence of the letter *wāw* in the Beirut edition, while this letter is found in all of the other modern editions. The specific phrase, as quoted by Heffening, reads:

”وهو أعدل أقاويل اصحابنا“[312]

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312. Heffening, "Islamischen Handschriften," 95 example 6. For the corresponding passage in the Beirut edition see Saḥnūn, *Mudawwana* Beirut, 4:373:06-07.

This discrepancy is most likely due to typographical error, although editorial error could

be a possibility also.

Of the other 58 variances which Heffening listed between the Leuven ms B5 and the

1324/1906-07 Cairo edition, no variances were found in any other cases between the

1324/1906-07 Cairo edition and that of the Beirut edition. No information is included in the

Beirut edition concerning the origin of the text presented, however this examination of the

discrepancies of the text indicate the strong likelihood that the the text of the Beirut edition of

the *Mudawwana* is in fact a re-print of the 1324/1906-07 Cairo edition originally printed in

four volumes.[313] Further investigations comparing the 1324/1906-07 Cairo edition with that

of the Beirut edition will be noted below in Section 5.2.4.5, on page 143. Discrepancies in the

texts of the 1323/1905 Cairo edition and that of the Beirut edition, will be the subject of

section 5.2.4.6 below, beginning on page 150. An examination of the differences between

these two editions will provide a better understanding, given Heffening's evidence, of the

textual differences brought to light just one year apart, likely due to different underlying

source texts.

5.2.4.3. CBL ms Ar 4835 folio 59b in comparative analysis with modern editions

Further detailed comparative analysis with folio 59b of CBL ms Ar 4835 and the

modern editions of the *Mudawwana* reveals several discrepancies with the modern editions.

Appendix E lists the various discrepancies that exist between the manuscript folio and the

four modern editions of the *Mudawwana*. Figure 6 on page 139 below displays this

manuscript folio with the addition of digital rectangles superimposed on the folio

demonstrating visually the frequency with which the folio is inconsistent with modern

editions of the same text. The extent of the differences between this folio and the modern

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313. See Heffening, "Islamischen Handschriften," 86.

editions is noteworthy. In the chart of discrepancies in Appendix E, the shaded and non-shaded areas of each row show consistency among the editions as well as with that of the manuscript. Cells across a row with the same level of shading (or none) indicate consistency. In almost every single instance, the 1323/1905 Cairo edition is inconsistent with the other three modern editions, while the other three editions, Beirut, Mecca and Abu Dhabi, are consistent with each other. This evidence, along with that of Heffening's findings with the additional research, leads one to conclude that the modern editions of the *Mudawwana* published since 1324/1906-07, all rely on the same textual source, whereas the 1323/1905 Cairo edition seems to be from a different textual source. It then becomes tempting to speculate that the 1323/1905 Cairo edition is less reliable than that of the other three editions. This speculation cannot yet be warranted. However, a much closer look at the differences between these two editions, the Cairo and Beirut editions, will assist in trying to determine the validity of the belief in the greater reliability of the 1324/1906-07 edition along with the other three modern editions.

5.2.4.4. Manuscript marginal notations

The manuscripts occasionally contain marginal notations. The marginal notations in the CBL ms Ar 4835 are of two orientations: horizontal and vertical. Horizontal marginal notations appear to represent scribal additions related to simple textual error corrections in the copy of the manuscript. Vertical oriented marginal notations are created by turning the manuscript on its axis by 90° and writing perpendicular to the main text of the folio. Marginal notations of this orientation appear to represent comments in the margin which are commentary on the content of the text. The shift in axis is believed to help avoid confusion that the notation might be a textual insertion. One example folio of a textual error marginal
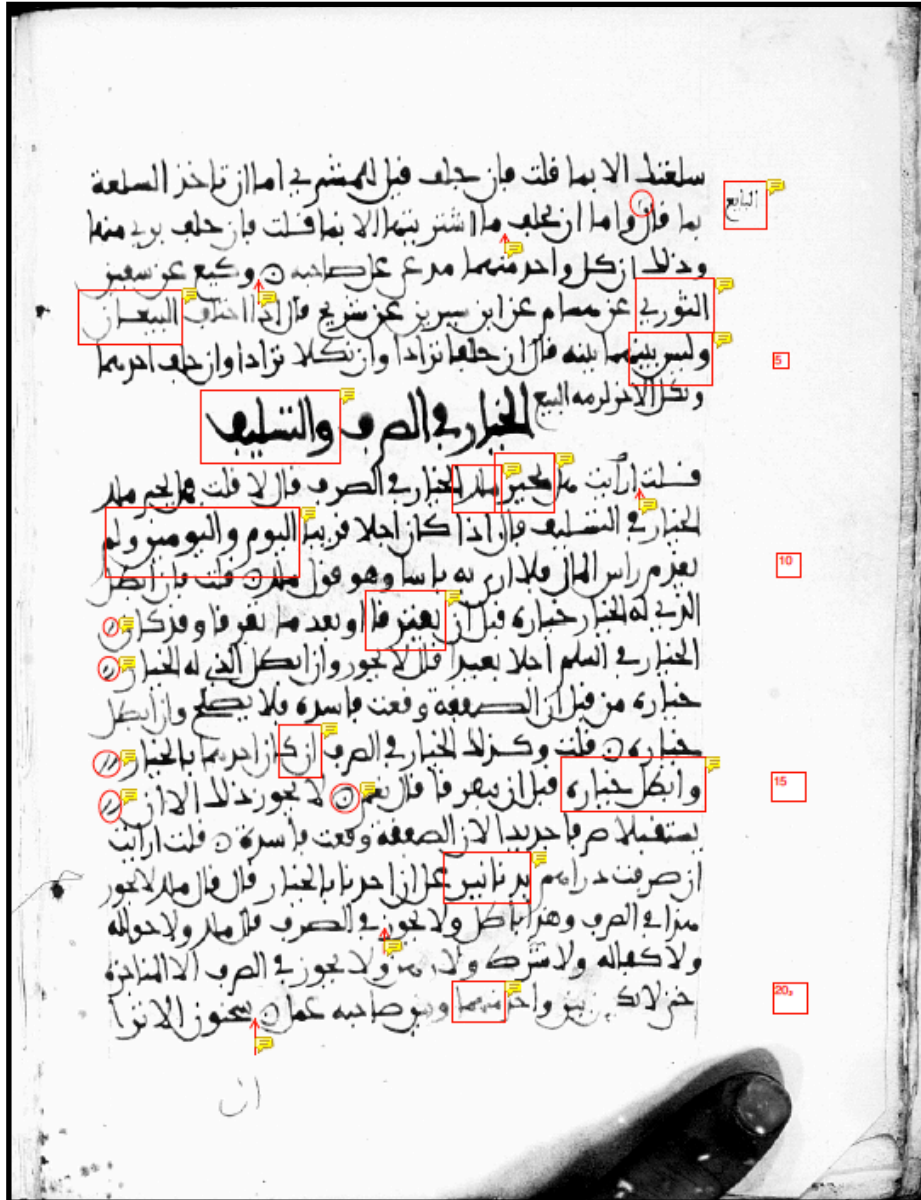
Figure 6. CBL ms Ar 4835:55b. Visual image of textual discrepancies with a manuscript folio. By permission of the Chester Beatty Library.

notation occurs in CBL ms Ar 4835 folio 32a. (See figure 7 on page 140 below.) On this

folio, there are three words that are written in the margins, located at lines 2, 8 and 15. The

words are written in a similar script to that of the main text. They abut the text when placed in

the margin. There is a written mark, like a hook, in the middle of line 2 and about a third of

the way through line 9 at the top of the text line, in the midst of the text. This mark acts as an

indicator of where these marginal notations should be placed within the body of the main

text. These are words which, for some reason, were not placed in the main text at the time of the original writing and so were added in the margin at a later time. The later insertion could
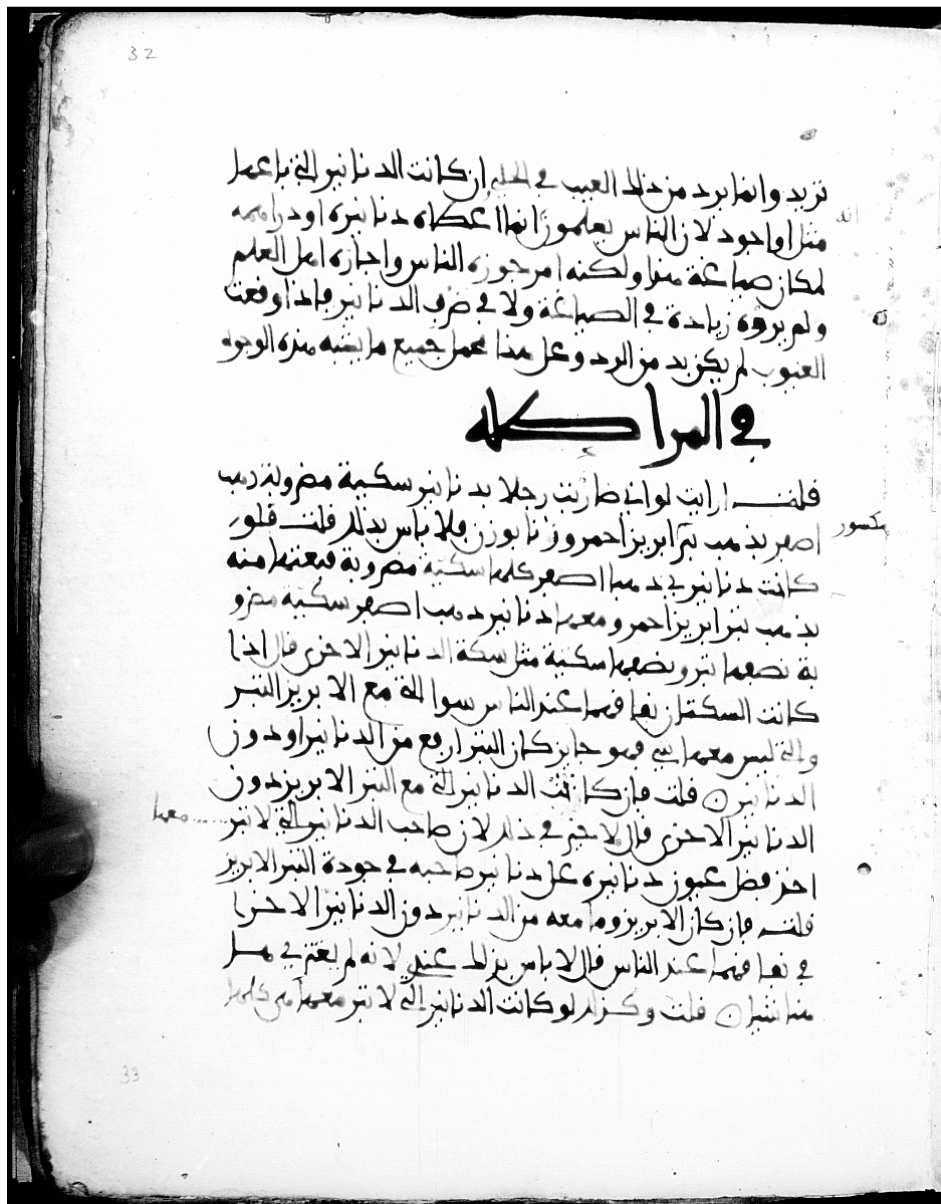
Figure 7. CBL ms Ar 4835:32a. Marginal notation correcting a textual error. By permission of the Chester Beatty Library.

have happened immediately after the original writing, by the scribe himself, realizing the omission, or much later. Handwriting analysis assists in identifying the time at which the notation was made. In each case, these words are part of the text in both the 1323/1905 Cairo

edition[314] and Beirut[315] edition. These marginal notations for this common type of scribal error in the CBL ms Ar 4835 are always written with a horizontal orientation in the margin, that is, parallel to the orientation of the text itself.

Sometimes marginal notations are useful in assisting to identify different manuscript traditions. A copyist could miss an insertion, creating a new manuscript tradition different from the manuscript from which he is copying. In the CBL ms Ar 4835, some folios have content associated with *Kitāb al-Salam al-awwal*. In one case in the left-hand margin of the folio, the phrase *idhā kāna mithlan bi-mithlin* has been added.[316] (See figure 8 on page 142 below.) When comparing this manuscript with the 1323/1905 Cairo edition, the text from the margin is not part of the modern edition.[317] Yet when comparing this section with the corresponding section in the Beirut edition, the material written in the margin of the CBL manuscript is part of the text itself in this modern edition.[318] It could be argued that the phrase added in the margin of folio 2a of the CBL ms Ar 4835 was added in when the copyist read back the manuscript to the dictator, if this was the practice, or when checking his own work with the original manuscript from which he was copying. However it seems odd, rather than coincidence, that this phrase should be both in the margin of CBL ms Ar 4835 and also missing from the 1323/1905 Cairo edition. This would tend to indicate that a textual tradition may have begun with an addition of a phrase to the text in this section, meaning that this phrase would then not be present in manuscripts from another copying tradition. More

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314. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 3:439:15, 20 and 3:440:3.

315. Saḥnūn, *Mudawwana* Beirut, 3:45:17, 23 and 3:46:2.

316. See CBL ms Ar 4835:2a:17.

317. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 4:34:23.

318. See Saḥnūn, *Mudawwana* Beirut, 3:84:10.

evidence, of course, would be necessary in order to establish this conclusion. This orientation

differs from marginal notations which are meant to act as some sort of commentary on the
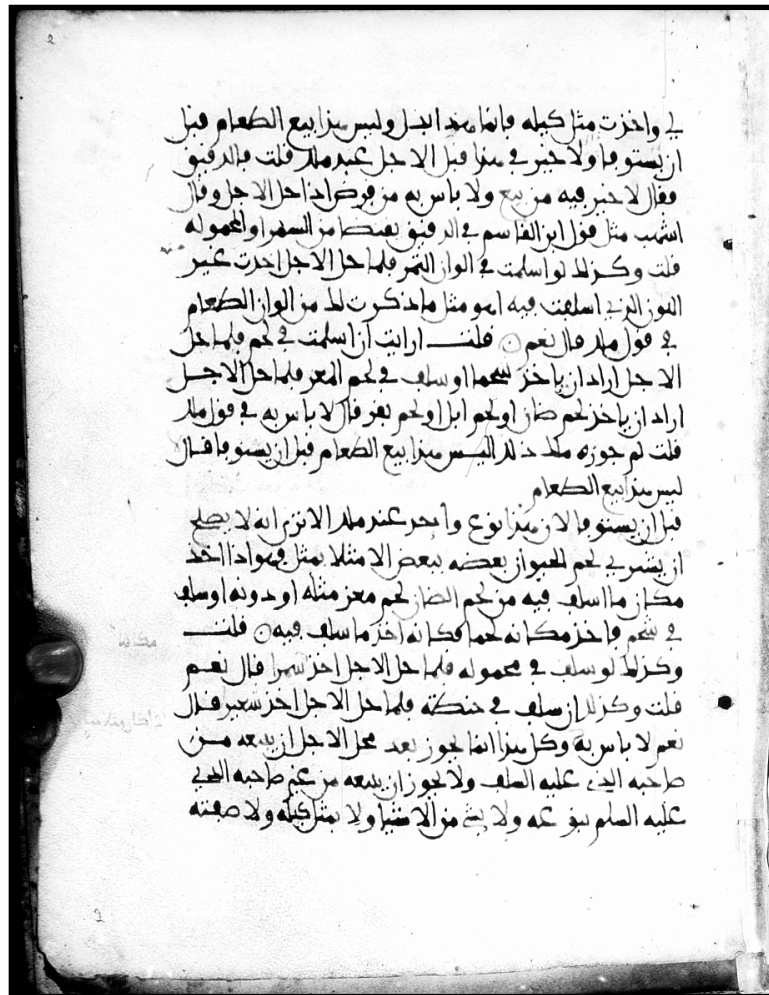
Figure 8. CBL ms Ar 4835:2a. Marginal notation in manuscript not part of text of 1323/1905 Cairo edition yet found in the Beirut edition. By permission of the Chester Beatty Library.

text, or an additional note that a redactor would like to add to the text at a later date from the

original copy. An example of this form of marginal notation can be found on CBL ms Ar

4835 folio 58a. (See figure 9 on page 144 below.)

One further manuscript notation must be mentioned. Although this research has not

focused primarily on the content of the manuscript marginal notations, recent scholarship has

pointed to evidence from a manuscript fragment and the marginal notation specifically in

order to support a dating for the *Mudawwana* or at least its compilation, to the time of

Saḥnūn.[319] The specific notation has been translated, "I heard this from Saḥnūn, reciting it back to him, in the year 235." This marginal notation certainly supports that Saḥnūn himself taught the material that is contained within the *Mudawwana* and that his students wrote material down. Yet the composition of the entire *Mudawwana*, nor even of its compilation, cannot be supported from the evidence of this single marginal notation. Although the notation supports that speculation, it is a conclusion which is too weighty to place on the weak evidence of one notation.

5.2.4.5. Comparison of the Beirut edition and the 1324/1906-07 Cairo edition

Initial comparisons between the 1323/1905 Cairo edition and the Beirut edition leads to speculation that the Beirut edition was based on a different source text. The study of Heffening, outlining the differences between the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition, supports the conclusion that there are different source texts for these two editions. Heffening's study also provides data used to support the speculation that the 1324/1906-07 Cairo edition is the source text for the Beirut edition.[320] These data, combined with further research presented below leads to the conclusion that these two editions are based on the same source text.

Comparisons made between the 1324/1906-07 Cairo edition and the Beirut edition seem to demonstrate that there is structural and content consistency between them. Presentation, a factor which affects the way in which the text is received, should not be considered in comparative analysis when attempting to better understand the underlying differences, for the internal structure of the two texts is the same. Internal structure can be defined as the structure of the individual components which make up the text as a whole. In

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319. See Brockopp, "Saḥnūn b. Saʿīd (d. 240/854)," 83.

320. See the study of Heffening as noted on page 132 and further detailed in Appendix D.
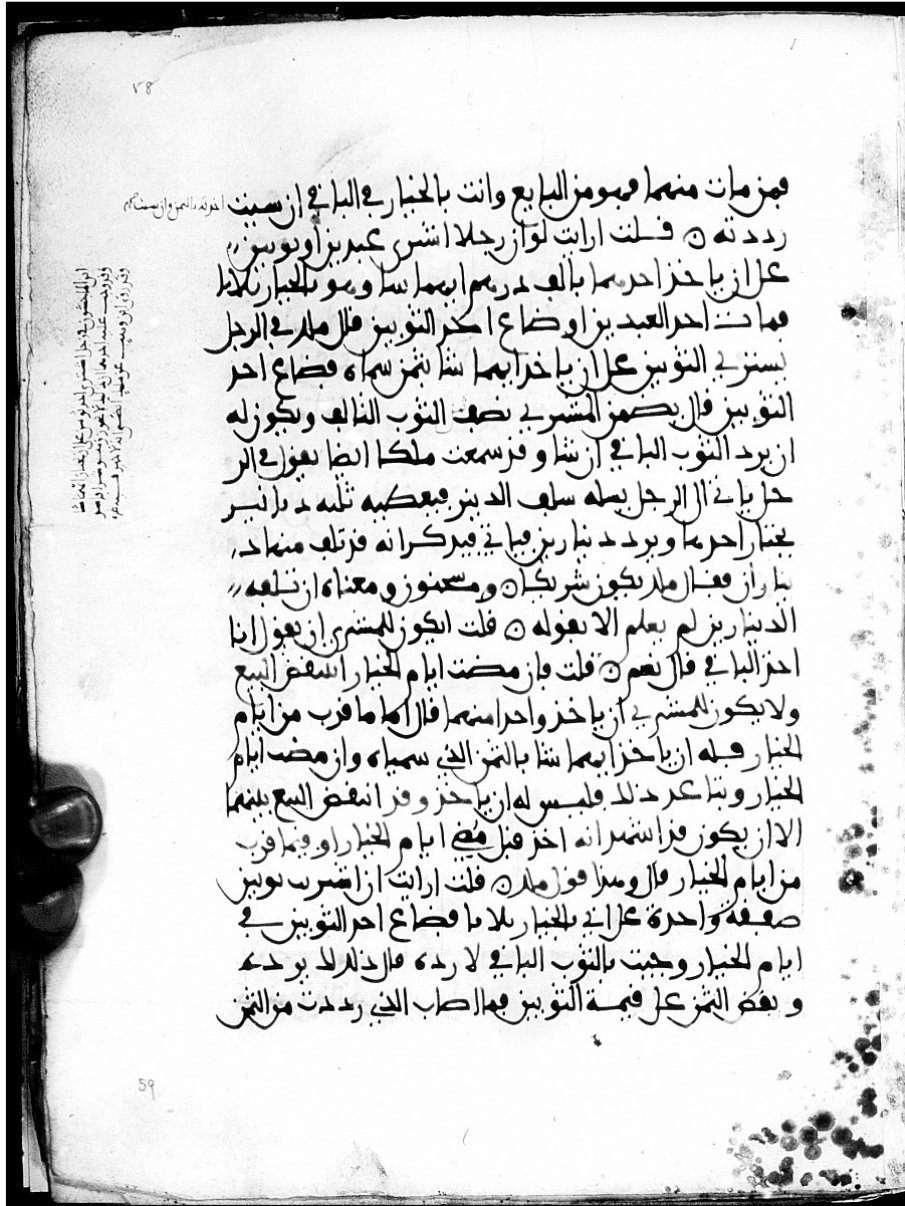
Figure 9. CBL ms Ar 4835:58a. Vertical marginal notation, denoting commentary on the text. By permission of the Chester Beatty Library.

this particular instance, although the volumes may demonstrate differing divisions between

them, each of the *kitāb*s within the larger text remains stable between the two editions.

Therefore, comparative analysis supports an internal structural integrity between the two

editions. This is significant in supporting the conclusion that both of these editions rely on the

same underlying source text.

These two editions are also textually identical in all respects with two known minor exceptions.[321] The following comparative textual analysis between the two editions includes various textual discrepancies which exist between the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition in order to see with which of the two Cairo editions the Beirut edition agrees. This comparative textual assessment exhibits the following observations:

• *Kitāb* divisions are consistent between the 1324/1906-07 Cairo edition and the Beirut edition. For example, in both of these editions, *Kitāb al-Nikāḥ* is divided into three *kitāb*s and not six like in the 1323/1905 Cairo edition.[322] *Kitāb al-Īlāʾ* and *Kitāb al-Liʿān* are separate *kitāb*s as in the Beirut edition and not the 1323/1905 Cairo edition.[323]

• Subject headings appear to be consistent between the 1324/1906-07 Cairo edition and the Beirut edition as the 1324/1906-07 Cairo edition does not have any subject headings in *Kitāb al-Liʿān* just as in the Beirut edition, but contrary to the 1323/1905 Cairo edition.[324]

• A section of text present in the 1323/1905 Cairo edition which is absent in the Beirut edition is also absent in the 1324/1906-07 Cairo edition.[325]

• There is consistency with named speakers from the Beirut edition which are absent in the 1323/1905 Cairo edition. In one location in *Kitāb al-Nikāḥ al-awwal* in the Beirut

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321. These exceptions are those noted in the follow-up to the study of Heffening. See above page 134.

322. See Saḥnūn, *Mudawwana* 1324/1906-07 Cairo edition, vol. 2.

323. See Saḥnūn, *Mudawwana* 1324/1906-07 Cairo edition, 2:320 and 2:335.

324. See Saḥnūn, *Mudawwana* 1324/1906-07 Cairo edition, 2:335-45.

325. Compare Saḥnūn, *Mudawwana* Beirut, 2:126 and Saḥnūn, *Mudawwana* 1324/1906-07 Cairo edition, 2:157 and Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 2:190.

edition,[326] speech is introduced with "*qāla* Saḥnūn." This is present in the 1324/1906-07 Cairo edition,[327] but absent in the 1323/1905 Cairo edition.[328]

- Honorific phrasal endings are consistent. In *Kitāb al-Nikāḥ al-awwal* of the Beirut edition, at the end of one subject, the phrase *wa Allāhu aʿlam* concludes the section.[329] This is also present in the 1324/1906-07 Cairo edition,[330] but absent in the 1323/1905 edition.[331] Additionally, the phrase by which ʿĀʾisha, one of the wives of the prophet, is referred, *umm al-muʾminīn*, is consistent between the Beirut edition[332] and the 1324/1906-07 Cairo edition,[333] which differs from the 1323/1905 Cairo edition, using the phrase "*zawj al-nabī*."[334]

- Unusual word discrepancies between the Beirut edition and 1323/1905 Cairo edition are consistent between the Beirut edition and the 1324/1906-07 Cairo edition. Examples of these are *al-muṭallaqa*, which appears in the Beirut edition[335] and the 1324/1906-07 Cairo edition[336] and *al-marʾa*, which is what is presented in the 1323/1905 Cairo edition.[337] In

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326. See Saḥnūn, *Mudawwana* Beirut, 2:103.

327. See Saḥnūn, *Mudawwana* 1324/1906-07 Cairo edition, 2:142.

328. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 2:159.

329. See Saḥnūn, *Mudawwana* Beirut, 2:136.

330. See Saḥnūn, *Mudawwana* 1324/1906-07 Cairo edition, 2:163.

331. Note that in the 1323/1905 edition, this is *Kitāb al-Nikāḥ al-thānī* and not *al-awwal*. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 2:203.

332. See Saḥnūn, *Mudawwana* Beirut, 2:108.

333. See Saḥnūn, *Mudawwana* 1324/1906-07 Cairo edition, 2:147.

334. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 2:166.

335. See Saḥnūn, *Mudawwana* Beirut, 2:11.

336. See Saḥnūn, *Mudawwana* 1324/1906-07 Cairo edition, 2:74.

337. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 2:428. This discrepancy between the 1323/1905 Cairo edition and the Beirut edition was briefly discussed previously on page 128.

Kitāb al-Nikāḥ al-awwal the word *maʿiṣat* appears in the Beirut edition[338] which agrees with the 1324/1906-07 Cairo edition[339] whereas this word appears as *maʿiḍat* in the 1323/1905 edition.[340] The same passage uses the word *yushāwiru* in the Beirut edition, again agreeing with the 1324/1906-07 Cairo edition, but is discrepant with the 1323/1905 Cairo edition which reads *tastaʾdhinu*.

These observations provide overwhelming support for the conclusion that these two editions of the *Mudawwana* share the same underlying textual source.

One other note of interest concerning the 1324/1906-07 Cairo edition should be mentioned. This edition includes something rather surprising in the text. In addition to the text of the *Mudawwana*, running on almost every page of the text is the medieval commentary of Ibn Rushd, lower on the page and separated from the main text of the *Mudawwana* by a double line. A separate index for Ibn Rushd's commentary is found at the back of the text. This would have been a very significant addition to the text of the *Mudawwana* when it was published in 1324/1906-07, just one year after the first modern publication of the *Mudawwana*. The addition of a commentary to a main text brings to mind the many commentaries of the Qurʾān which include, along with the commentary, the full text of the Qurʾān. In terms of presentation, the page of the text may contain a lithographed copy of a page from the full text of the Qurʾān, with the commentary typeset around it.[341] In the case of the 1324/1906-07 edition of the *Mudawwana*, an attempt has been made to bring

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338. See Saḥnūn, *Mudawwana* Beirut, 2:103.

339. See Saḥnūn, *Mudawwana* 1324/1906-07 Cairo edition, 2:142.

340. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 2:159.

341. Riedel's article concerning Bayḍāwī's *tafsīr* is an excellent demonstration not only of engaging the text of a commentary with the original text together on the same page, but also of the ways in which manuscript layouts were often mimicked to some extent in early modern publications of their texts. See Dagmar Riedel, "In Praise of Academic Grazing: From Script to Print to Script - A Quran Commentary of No Importance," Paper presented at the 25th Annual Conference of the American Council for the Study of Islamic Societies, Washington, DC, 12 April 2008.

the legal text of Saḥnūn together with one of the more well-known, and well-respected, commentaries of the text. See Figure 10 on page 149 below for a sample of one of the pages of the 1324/1906-07 Cairo edition of the *Mudawwana* displaying the commentary of Ibn Rushd at the bottom of the page. Note that the editor attempts to make the commentary of the text more accessible and useful for the reader by bringing the commentary and the text together.[342]

Yet the editor, rather than make adjustments to the order of the text of the commentary, valued fidelity to the order of the commentary above accessibility to the reader. The order of *kitāb*s within Ibn Rushd's commentary is not consistent with the order of the *kitāb*s in the 1324/1906-07 Cairo edition. Preserving the integrity of the order of the text would normally be considered very positive from a textual perspective, however, it completely nullifies any value that is attempted in trying to make this text conveniently available as a commentary for the reader of the *Mudawwana*. For when reading the page of the *Mudawwana*, as the orders of the *kitāb*s are not consistent, the commentary for Ibn Rushd is most often not related to the text found on that page. The incongruence of the orders of the two texts makes finding commentary by Ibn Rushd concerning a particular passage more awkward than simply having two separate texts. The arrangement chosen in later editions, like that of the Beirut edition, was to simply publish Ibn Rushd's commentary in separate volumes following the conclusion of the text of the *Mudawwana*. Although trying to bring the commentary and the text of the *Mudawwana* together seems positive, this attempt fares poorly given the inconsistent order of the *kitāb*s between these two texts.

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342. Here al-Qāḍī would commend the work of the editor of the 1324/1906-07 Cairo edition of the *Mudawwana* for seeming to make the text more accessible to the reader. See above page 88 note 232 and al-Qāḍī, "How 'Sacred' is the Text?", 34-52.
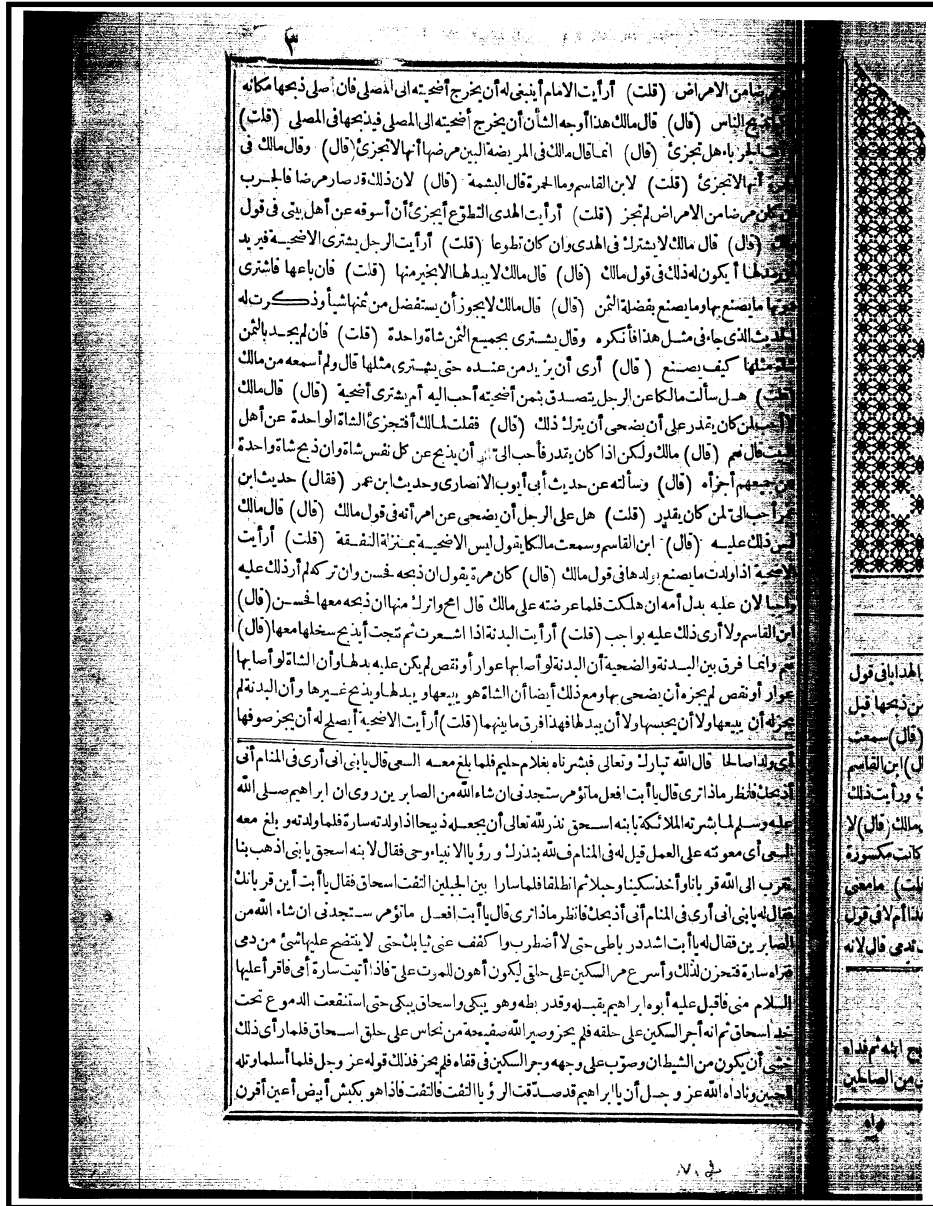
Figure 10. Page 3 of Volume 2 of the 1324/1906-07 Cairo edition of *al-Mudawwana al-kubrā*. The the corresponding text of the commentary of Ibn Rushd, *al-Muqaddimāt al-mumahhidāt*, is on the bottom half of the page.

Given the observations presented above concerning the consistency of the internal structure and text between the 1324/1906-07 Cairo edition and the Beirut edition, it can be safely concluded that these two texts rely on the same underlying textual source. Further comparisons with the the 1323/1905 Cairo edition will be based on the Beirut edition due to its ease of accessibility. The Beirut edition rests on the same textual basis as the underlying

textual source of the 1324/1906-07 Cairo edition, as it is assumed to be a new type-setting of the older printing.

5.2.4.6. Comparison of the two modern editions: the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition as represented by the Beirut edition

Upon turning the flyleaves and publishing information pages of the Beirut edition of the *Mudawwana*, one immediately sees a major content difference between the the Beirut edition and the 1323/1905 Cairo editon: the Beirut edition has added two ancient texts along with the *Mudawwana*, as well as a modern biography on Saḥnūn and his writing of the *Mudawwana*. Included are *Kitāb Tazyīn al-mamālik bi-manāqib sayyidinā al-Imām Mālik* by Jalāl al-Dīn al-Suyūṭī (d. 911/1505) and *Kitāb Manāqib sayyidinā al-Imām Mālik* by ʿĪsā b. Masʿūd al-Zawāwī (d. 743/1342). Both of these additional texts are meant to assist the reader by providing background information concerning Mālik. The biography of Saḥnūn is meant, of course, to provide more background on Saḥnūn, and the circumstances under which Saḥnūn was active in the production of the *Mudawwana*. Al-Suyūṭī and Zawāwī's sources are the biographical dictionaries of North Africa and the Mālikī *madhhab*. Given the length of time between the events and the recording of these biographies, from 500 to 700 years after the events, it is understandable that the reliability of the information would be in question.

Beyond these immediate differences, a deeper investigation is necessary in order to demonstrate exactly how these two editions differ from each other. The textual differences between these two editions[343] can be classified into four different types. All types will be

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343. The other two modern editions referred to in this research, those from Mecca and Abu Dhabi, have not been included for comparative purposes in this section. However they have been included in the data of the spreadsheet in Appendix B. It should be noted that these two editions contain some editorial errors. A minor error involves the absence of the title of *Kitāb al-Sharika* as well as its page number, 1841, from the index of the Mecca edition. See Mālik b. Anas, *Mudawwana* Mecca, 6:ا. Also in the Mecca edition one verse from the Qurʾān is listed in the index to Qurʾānic verses as appearing twice in volume six, where they really appear in volume seven (page numbers are correct though, as the page numbers are consecutive throughout the various volumes in the Mecca edition, with each volume not returning back to a page one). In the index of the Abu Dhabi edition, all *kitāb*s are given an ordinal number. However in volume 5, *Kitāb al-Sharika* is not given an ordinal number in the index, although its name does appear there. Considering the order in which it falls, it

defined first, with examples following as in some instances when examples are given, several different types of differences occur within one example passage. The first type includes those differences where the word order differs between the two editions. This can be as simple as one word being inverted with another or where two phrases are transposed with each other. When the wording differs between the two editions but the received meaning is the same, the reason can be as simple as a spelling error in one edition. Some may not consider a spelling error a case of difference, however there are spelling errors which result in different words, changing the meaning of the sentence or term.[344] This category generally refers to situations where there is no significant change in meaning in the passage, but different wording has been used in both, resulting from synonymous terms. A second type of difference is where word forms differ. In this case, the root word itself is the same, but the form that the root takes differs from one edition to the other. For example a verb might be changed to a noun, or a noun could change from one gender form to another. A third case where differences exist between editions includes those where the wording itself differs between the editions but the meaning is the same. In these cases, the words are formed from completely different roots. The general meaning of the passage is not altered, as the word or words affected are synonymous. These are the first three categories of differences between the two editions.

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should be numbered 49, as the previous *kitāb* is 48. However this one is skipped altogether, and, as a result, the final total for the number of *kitāb*s in the Abu Dhabi edition is incorrect by one. See Saḥnūn, *Mudawwana* Abu Dhabi, 5:621. A similar editorial error occurs in the Beirut edition with the absence of one subject heading in the index at the beginning of *Kitāb al-Wadīʿa*. In the Beirut edition, the *kitāb*s are not numbered ordinally. See Saḥnūn, *Mudawwana* Beirut, 4:705:12.

344. In the Beirut edition 1:116:7 the *sūra* referred to is misspelled. A Qurʾānic quotation is made from *Sūrat al-Nahl* (The Bee). The Beirut edition includes references to the Qurʾān citing the names of the *sūra*s and giving their *āya* number. It is most likely that the modern editor added the names of the *sūra*s and the *āya* numbers, as none of the manuscripts accessed ever listed the name of the *sūra* or the *āya* number in the case of a Qurʾānic quotation. In this particular case, the *sūra* is written as *al-Nakhl* (meaning The Palm Tree, which is not a *sūra* of the Qurʾān) instead of *al-Nahl*. It is possible that this is a scribal or copyist error, yet it is more likely this is simply a modern editorial proofing error. It does seem particularly odd though that the typesetter and proofreader would not have caught an error involving the name of a *sūra* of the Qurʾān.

The final category of differences deals with situations where a word, phrase, sentence or even more is found in one edition, but no corresponding piece is found in the other. The most glaring of these differences involves subject headings, as these stand out on their own by formatting of the text, but also because a comparison of subject headings via the indexes available in each edition is quite a simple matter. Yet there are examples of entire sections of text found in one edition but not the other.[345] As subject headings have been dealt with previously in section 5.2.3 (see page 121), they will only be mentioned here in situations where their inclusion is dependent on the context of textual content.

The first example of these textual differences between the 1323/1905 Cairo edition and the Beirut edition of the *Mudawwana* comes from *Kitāb al-Janāʾiz* (burial rites [4]). Two phrases are reversed in their word order and there is a slight change in meaning in the main phrase through a different form of the same root word. In the first volume of the 1323/1905 Cairo edition on page 177 starting at line 15, the subject heading reads "*al-ṣalāt ʿalā qātil nafsihi*" ([ritual] prayers [for the dead] over [one] killing himself). There is no discrepancy between the two editions in the subject heading. The first line of text reads:

''(قال) وقال مالك يصلى على من قتل نفسه وإثمه على نفسه ويصنع به ما يصنع بموتى المسلمين''

Whereas in the Beirut edition, 1:254:7-8, two of these phrases are reversed, rendering the sentence as:

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345. As mentioned above in section 1.4 on page 37, one of the more recent studies on Mālik and the writings of the Mālikī school is that of Abd-Allah Wymann-Landgraf. His recent publication is a revision of his doctoral dissertation done some decades ago. He has revised his findings to include pertinent developments in the field from the time of his original writing. He devotes a small section to comparative studies on editions of the *Mudawwana*, with one part dealing with comparative sections of different editions, the type spoken of here. Yet his conclusions do not always correspond with the findings presented here. Concerning the relationship between the 1323/1905 Cairo edition with the 1994 Beirut edition he says: "The 1994 edition of the *Mudawwana* is a reprinting of the 1905 version with no new manuscript evidence." See Abd-Allah Wymann-Landgraf, *Mālik and Medina*, 63nt125. The specific evidence presented here does not support the claim that the 1994 edition was simply a reprinting of the 1323/1905 edition. Rather it supports the supposition that indeed new manuscript evidence was available to the editor of the 1324/1906 edition and hence the 1994 edition of the *Mudawwana.*

‏قال: وقال مالك: يُصلى على قاتل نفسه ويصنع به ما يُصنع بموتى المسلمين وإثمه على نفسه،‟

A reversal of the phrases occurs between *wa-ithmuhu ʿalā nafsihi* (his sin is against himself)

and *wa-yaṣnaʿu bihi mā yuṣnaʿu bi-mawtī al-muslimīn* (and he does with him what is done

with the dead among the Muslims), yet this does not shift the meaning of the passage. It may

be argued that the 1323/1905 Cairo edition is a more natural reading of the situation than the

Beirut edition. The word order of the Beirut edition gives the sense of a phrase being tacked

on at the end which belongs to the main idea, but it has been put in a less desirable position in

the sentence. The reading sounds a little awkward as the phrase at the end, *wa-ithmuhu ʿalā*

nafsihi, modifies the person who killed himself, rather than the action of the community in

burial rites. Another change, what was recorded in the 1323/1905 Cairo edition as *man qatala*

is rendered in the Beirut edition as *qātil*. The context of the passage supports the meaning that

the individual has committed suicide. The later transposition in phrases does not change the

meaning of the description of the person, it is merely a change in the order of presentation.

One of the roles of the modern editor, as mentioned above in section 4.6 on page 87,

is to make the text more accessible to the reader. In doing so, editors must make textual

decisions, sometimes introducing changes to the written text sometimes based on modern

convention. For example, in ancient and medieval manuscripts many letter forms are

undotted which in modern times have superscript or subscript dots to differentiate them from

other letters sharing the same base form. In order to reduce ambiguity between letters,

following modern convention, editors must decide which letter to put into a final copy. In

many cases these decisions are based on possible letter combinations, the context making it

clear which possible reading is correct. Here what the editors have done is simply make it

easier to understand the actual content of the text, reducing possible confusion over whether a

particular letter is a *rāʾ* or a *zayn* or clarifying if a letter is a *hāʾ* or a *jīm* or a *khāʾ*. This

speaks specifically to al-Qāḍī's prescriptive statement that editors must work to make the text

more accessible to the reader.[346] However, sometimes more than one reading is possible and the editor must choose one reading over a second possible reading. In this case, possible meanings for the text will become more restricted.

In the 1323/1905 Cairo edition, 2:159:9-12, following the *isnād* one finds:

"قال تستأمر اليتيمة في نفسها فان معضت لم تنكح وان سكتت فهو اذنها. ويدل على أن اليتيمة اذا شوورت فى نفسها أنها لا تكون الا بالغا لان التى لم تبلغ لا اذن لها فكيف تستأذن من ليس لها اذن."

The corresponding passage in the Beirut edition, 2:103:20-23, reads:

"قال «تستأمر اليتيمة في نفسها فإن معصت لم تنكح وإن سكتت فهو إذنها». قال سحنون ويدل على أن اليتيمة إذا شوورت في نفسها أنها لا تكون إلّا بالغاً لأن التي لم تبلغ لا إذن لها فكيف يشاور من ليس له إذن."

There are several things worthy of note in this passage. The first discrepancy encountered, as mentioned briefly above on page 147, is the use of the word *ma ʿiḍat* in the 1323/1905 Cairo edition, whereas in the Beirut edition the word used is *ma ʿiṣat*.[347] In the manuscripts, the difference between these two letters, *ḍād* and *ṣād* would not be observable, as it is only distinguished by a dot, and manuscripts have demonstrated that the dot may well not be present in the case of *ḍād*. As such, it would be the modern editors who would have to make a judgment, in the case of more than one possibility for a particular letter if it was one or the other, and indicate that in the edition. In this instance, the 1323/1905 Cairo editor has chosen the word *ma ʿiḍat* ([the orphan] was angry/annoyed) whereas the Beirut editor has chosen the word *ma ʿiṣat* (meaning unclear). The 1323/1905 Cairo edition includes a footnote with the content of marginal comments from the manuscript. It appears that there are two separate marginal notations. The first marginal notation says that the words should be *ma ʿiḍat* "*bi ʾl-ḍād*." The footnote goes further to say that for those who say *ma ʿiṣat* (unpointed, i.e. the

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346. See above page 88.

347. The vowelling for this word is taken from al-Jubbī's commentary. See just below.

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letter *ṣād*), it would only have one meaning, that she frowned [or knitted her brow]. The footnote then begins the second marginal notation which includes within it the phrase "from the margin of the original." So this second marginal notation was copied from a previous manuscript. It says that *maʿiḍa* according to the dictionary known as "*al-Qāmūs*"[348] and a commentary (*sharḥa*) on that as well as support from a *ḥadīth* of Ibn Maymūn stating that this is the correct reading and there is no doubt in what the scribe has written. The modern editor of the 1323/1905 Cairo edition confirms that the marginal notation has been copied correctly with the added phrase "*katabahu muṣaḥḥiḥuha.*" It is also interesting to note the reference in al-Jubbī's commentary to the word *maʿiṣat* in his section on *Kitāb al-Nikāḥ*.[349] It appears that Jubbī was working from an understanding that the word in the text was not *maʿiḍat*. In addition to providing the correct spelling for the word (*bi-fatḥat al-mīm wa-kasrat al-ʿayn wa-fatḥat al-ṣād ghayr manqūṭa*), al-Jubbī also provides a definition: one that is red in the face from embarrassment and has done more than what is required. It has been demonstrated, for the purposes of this research, that the modern editors must take all of this evidence into account when making decisions concerning ambiguous vocabulary such as this one. The two editions each use a different word, and yet arguments are made giving reasons explaining the particular choice of word.

A second observation with this small passage is the addition in the Beirut edition of the phrase "*qāla Saḥnūn.*" There is no reference to Saḥnūn in the 1323/1905 Cairo edition whatsoever. The inclusion of a "Saḥnūn said" by the editor of the Beirut edition is sufficiently random to allow the suggestion that there is a source text under this rather than an editor's attempt to "improve" the text.

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348. This "*al-qāmūs*" refers to Majid al-Dīn Muḥammad b. Yaʿqūb al-Fayrūzābādī, *al-Qāmūs al-muḥīṭ* (Beirut: al-Risāla, 2005), 654. Indeed the marginal notation is quoting this dictionary of al-Fayrūzābādī.

349. Note that al-Jubbī vowels his vocabulary. See al-Jubbī, *Kitāb sharḥ gharīb alfāẓ al-Mudawwana*, 84. No comment was found in any of the other commentaries concerning this ambiguous word.

Near the end of the passage there is a change in verb. In the 1323/1905 Cairo edition, the verb used is *tusta'dhan* (to ask permission), mentioned above on page 147, whereas in the Beirut edition the word used is *yushāwiru* (to consult someone). Not only does the root verb change from *alif-dhāl-nūn* to *shīn-wāw-rā'* but also the gender of the subject of the verb changes from female to male, although both remain in the third person singular. This shift in gender changes the word which follows shortly afterwards from *lahā* to *lahu* in order to keep agreement between the verb and the referent subject, male or female. The change in verb between these two editions in this example passage provides further evidence that different sources were used by these editors in preparing their editions.

In *Kitāb al-ʿIdda wa ṭalāq al-sunna* [30] of the 1323/1905 Cairo edition it reads,

''(قال) قال مالك لاتدهن الحادّ الا بالحَلِّ يريد الشيرج أو بالزيت ولا تدهن بشىء من الادهان المرببة (قال مالك) ولا تمشط بشىء من الحناء ولا الكتم ولا بشىء مما يختمر فى رأسها''[350]

The Beirut edition of the *Mudawwana* in the corresponding text found in *Kitāb Ṭalāq al-sunna* reads similarly, with only two words appearing differently. Where the 1323/1905 Cairo edition reads *tumashshiṭu* (to comb) the Beirut edition reads *tamtashiṭu* (to comb; the same meaning). Also, in the place of *al-murabbaba* (to be infused with fragrant oils) in the 1323/1905 Cairo edition, the text in the Beirut edition reads *al-muzayyana* (adorning). The 1323/1905 Cairo edition has a footnote related to the word *al-murabbaba* giving an indication of the spelling of the word. The footnote includes the letter *alif* and *hāʾ* at the end of the notation, indicating that the footnote is copied from the source text. The footnote reads:

''(المرببة) بباءين مفتوحتين مع تشديد أو لاها أى المصلحة بالطيب''[351]

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350. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 2:432:18-20.

351. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 2:432:21-22.

So it is clarified in the footnote of the text what the reading of this word should be, at least in the mind of the individual writing in the margin of the ancient manuscript, defining it as beneficial out of goodness. Who this might have been is unknown, but the marginal notation would date from anytime after 476/1083-84, the date when the manuscript was copied according to the text itself. Similarly to a previous example above, with the original source manuscript not having dots on the letters, any reader would have been left to either deduce by context what the particular word should be or guess using one's language knowledge. The ambiguity of this word is demonstrated through the use of another word in the Beirut edition, *al-muzayyana*.

A final example of the differences between these two modern editions involves the absence of an entire section of text in one of the editions which is found in the other. In *Kitāb al-Nikāḥ al-thānī* of the 1323/1905 Cairo edition, there is a section beginning with the following subject heading:

"فى انكاح الرجل وليته من رجل وهو مريض"[352]

Neither the subject heading, nor the entire section, eight lines of text, appear in the Beirut edition at all. Several speculations could be proposed as to why this section of text is absent in one edition yet appears in the other. A scribe might have found the handwriting here difficult to read and neglected to copy this section. The manuscript page on which this section occurs may have gotten lost or damaged or destroyed somehow. As the section before ends with "Mālik" (written as ملك in the manuscripts, without the *alif*) and this section ends with *dhalika* (ذلك) also written without the *alif* (as is standard), it is possible the scribe took a

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352. Recall that in the 1323/1905 Cairo edition *Kitāb al-Nikāḥ* is divided up into six separate *kitāb*s whereas in the Beirut edition, it is divided up into only three. So the corresponding part of the text in the Beirut edition is found in *Kitāb al-Nikāḥ al-awwal*. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 2:190:10-18. For the corresponding section of the Beirut text see Saḥnūn, *Mudawwana* Beirut, 2:126:20. The absent section would occur between lines 19 and 20.

break, and upon returning to the task did not pay due attention to which section he had finished, confusing what he had written skipping over a section. The lesson may have been oral with the scribe copying what was taught, and during this particular session, this section was not presented. It is possible this section was a later addition to one manuscript tradition by a redactor. It is possible that a disciple who listened to the teachings of the *Mudawwana* and received a certificate to teach its material, learned of this section in some other way and added it to his teaching. It is also possible that an omission occurred in the modern edition. It may have been in the source manuscript for the Beirut edition, and for some reason the editor chose not to include it in the printed edition. However, this last possibility seems highly unlikely. Some of these possibilities are more reasonable than others. Of these possible solutions, the most likely seems to be one of two. Either scribal or organizational error caused one subject heading to be dropped from this particular manuscript tradition at one point in its history, or this subject heading was added at some point following a previous presentation of the material, allowing for one tradition to carry a more expanded text. The individual responsible for this possible "revised edition" could be as early as the time of Saḥnūn or as late as a medieval editor, however this latter possibility seems less likely. Without access to other sources of the *Mudawwana* only speculation could conclude the reason for this discrepancy.

5.2.5. Honorific Phrasal Endings

Informal honorific phrasal endings to a section seem to indicate further redaction to the text either by a copyist, or possibly a reader adding phrases at the end of a section. These sometimes appear discrepant between the two editions. For example, in the Beirut edition in *Kitāb al-Nikāḥ al-awwal* [21], at the end of the brief section concerning the permissibility of

a man to marry his *mukātaba*[353] the following phrase is found: *wa-Allāhu aʿlam*.[354] This is not found in the corresponding section of the 1323/1905 Cairo edition.[355] Similarly at the end of a lengthy section in the 1323/1905 Cairo edition of *Kitāb al-ʿIdda wa ṭalāq al-sunna* [30] the final phrase, in reference to *Allāh* is *ʿazza wa-jalla*.[356] Whereas in the Beirut edition, the phrase reads *tabāraka wa-taʿālā*.[357] It is possible that a student, upon copying this lesson, may have added these titles from the time of the teaching, although there is no evidence to either confirm or deny such a supposition. One further possibility is modern custom influencing the changes. Again, without further evidence, it is speculation to suggest reasons for these discrepancies, but they provide further evidence for different traditions relied upon for the two modern editions.

A second example of discrepancies between honorific titles following names involves the way in which ʿĀʾisha, one of Muhammad's wives, is referenced.[358] In *Kitāb al-Nikāḥ al-awwal* [21] in the 1323/1905 Cairo edition, she is referred to as "*zawj al-nabī*"[359] whereas in the same passage in the Beirut edition she is referred to as "*umm al-muʾminīn*,"[360] the title referencing *Surāt al-Ahzāb* 6. It seems curious why the title for ʿĀʾisha is different in the two editions. These simple differences between these two modern texts indicate the likelihood that at some point someone added these titles to the text, such as a scribe in the act of copying

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353. *mukātaba*: one who was a slave to the other, but upon writing a contract, it was agreed that the slave would pay a sum of money earning his/her freedom

354. See Saḥnūn, *Mudawwana* Beirut, 2:136:5.

355. Compare Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 2:203:14.

356. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 2:427:23.

357. See Saḥnūn, *Mudawwana* Beirut, 2:10:18.

358. This reference was also referred to above on page 146 demonstrating consistency between the 1324/1906-07 Cairo edition and the Beirut edition.

359. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 2:166:1-2.

360. See Saḥnūn, *Mudawwana* Beirut, 2:108:19.

the text. In this case, the two titles could have been added independently of each other at different times and at different places. Another possibility is that one of the two titles could have been found in a manuscript, but then later changed by a copyist while copying the manuscript out of habit or changing cultural practice. As such, if one title were changed for another, it would be more likely that the change was from *zawj al-nabī* (wife of the prophet) to *umm al-muʾminīn* (mother of the believers), rather than the reverse. Without further manuscript evidence, it is impossible to conclude these speculations.

5.2.6. Concluding Statements

It is difficult to make an assertive statement concerning the inconsistency of the concluding statements of each of the *kitāb*s. Most manuscript *kitāb*s, of which the end pages are still extant, have a concluding statement at the end of the *kitāb*. These conclusions state the name of the *kitāb* which is ending. Concluding statements in the manuscripts do not include an indication of the *kitāb* which is to follow, even when the *kurrāsa* contains more than one *kitāb*.[361] The concluding statements can vary from one *kitāb* to another within a manuscript, especially concerning the recognition of Allāh's help or strength or in giving praise to Allāh. The statements usually include that the *kitāb* is "*min al-Mudawwana*."

In the modern editions, the conclusion of each *kitāb* is generally indicated with a clear statement that the *kitāb* has concluded.[362] In the Beirut edition formal concluding statements include the name of the *kitāb*. There are only two *kitāb*s which do not exhibit a concluding statement, these being *Kitāb al-Walāʾ waʾl-mawārīth* and *Kitāb Kirāʾ al-dūr waʾl-araḍīn*. The reason for this is likely just editorial error, however it is possible that the original manuscripts for some reason had no statement at the end of each of these *kitāb*s. The

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361. This includes CBL mss Ar 3006 and Ar 4835 as well as BL ms Or 6586.

362. The presentation of concluding statements and the conclusions of *kitāb*s is the subject of section 5.3.6 on page 179.

formatting of the concluding statement is not consistent between the *kitāb*s. This is also very possibly a carry over from the manuscripts. From the beginning of volume one until about half way through the volume, the statements vary greatly. In some cases, added to this formal ending is a recognition that the end has come with praise to Allāh and a recognition of his help and agreement. By the end of volume one, there is a general statement at the end of each *kitāb* which is repeated almost verbatim through to the end of the text. The first six *kitāb*s do not mention the larger work that the *kitāb* is a part of, but beginning with *Kitāb al-Zakāt al-awwal* all the way to the end of the fourth volume, the concluding statement includes the phrase *al-Mudawwana al-kubrā* as part of the reference for the greater work. This phrase, as a title, is only found in the modern editions of the *Mudawwana*. At the end of each of volumes one, two and three there are additional phrases indicating that the volume itself is ending and a subsequent volume, named, will begin. It is these references to the volume numbers that are the best indicator that these concluding phrases at the end of each *kitāb* have been prepared or at least edited by the modern editor. For this reason, to have the phrase *al-Mudawwana al-kubrā* included in the statement is not too alarming in terms of understanding that the title is a modern invention. With the addition of this title to the end of each of the *kitāb*s in the modern editions of the *Mudawwana,* along with the absence of the title in this form in any of the manuscripts examined, it seems apparent that this title, given later to the work as a whole, is a creation of the modern editors of the text.

5.2.7. Modern Editions

5.2.7.1. Footnotes

Footnotes are treated differently in the two editions. The Beirut edition makes no use of footnotes anywhere in the text whatsoever. Content is only conveyed through the main text of the body of the book with no attempt made to provide any commentary on the text. The 1323/1905 Cairo edition, on the other hand, has occasional footnotes throughout the main

body of the text, something which distinguishes it from a manuscript. They are used for two purposes, either to communicate information which is located in the margins of the manuscript itself, or to include editorial comments regarding the vocabulary or other meaning of the text. In the case of the former, the editor has included in the footnote an indication that the quote is from the margin of the manuscript (*min hāmish al-aṣl*). It is these footnotes which are most interesting when comparing the content of the two editions.

In *Kitāb Nikāḥ al-awwal* [21] of the 1323/1905 Cairo edition the following is found in regards to a *ḥadīth* instructing men not to get married to a woman without the permission of her *walī*:

"ابن وهب عن سفيان الثورى عن أبى اسحاق الهمدانى عن أبى برده بن أبى موسى الاشعرى⁽¹⁾ أن رسول الله صلى الله عليه وسلم قال لا نكاح لامرأة بغير اذن وليّ". ³⁶³

The footnote related to this saying in the 1323/1905 Cairo text states the following:

"(قوله عن أبى بردة بن أبى موسى) كذا فى نسخة وفى نسخة أخرى عن أبى موسى قيل ان هذا الحديث موقوف على أبى بردة قاله على بن المدنى قال لا يصح عن النبي صلى الله عليه وسلم انه قال لا نكاح إلا بولى اه وممن أجاز النكاح بغير ولى ابن سيرين والحسن والشعبى وروى ذلك عن على بن أبى طالب وقال به أبو خيفة اه وقوله لا نكاح مثل هذا اللفظ اذا ورد فى مثل النكاح والمعاملات فلا يحمل بوجه الا على نفى الصحة واذا ورد في العبادات كالوضوء والصلاة فقد وقع على الاجزاء وعلى الكمال واختلف أهل الاصول على مايحمل منهما اذا لم ثكن فريضة اه من هامش الاصل". ³⁶⁴

The footnote provided here in the 1323/1905 Cairo edition initially indicates a variant reading in another manuscript concerning the *isnād*. Following this, it provides discussion concerning whether or not Muḥammad actually said the words accredited to him in the *ḥadīth* which is quoted in the text, "*lā nikāḥ ilā bi-walī*." The particular *isnād* mentioned in the text is noted as being "*mawqūf*", however another *isnād* is given through Alī b. Abī Ṭālib, which was

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363. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 2:165:14-16.

364. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 2:165n1.

referenced by Abū Ḥanifa. At this point the discussion in the footnote becomes more content oriented, describing Alī b. Abī Ṭālib's saying and contrasting the perspective of *nikāḥ* (marriage contract) as either an aspect of ritual practice (*ʿibādāt*) or contractual arrangements between people (*muʿāmalāt*). The discussion indicates that from the perspective of *muʿāmalāt*, the *nikāḥ* should only be characterized this way in the event that there is something wrong with the soundness (health of the party?) and there is a refusal then given. Concerning *ʿibādāt*, the *nikāḥ* needs to be considered in some sense a part of *ʿibādāt*, an evidence of this being what is left of the arrangement after considering the differences amongst those who deal in the fundamentals (*uṣūl*) [of jurisprudence] concering all of it and the parts of it if it is not an obligation.

Although this may seem like an overwhelming amount of information to take in, that is, to some extent, part of the point here. The footnotes in the 1323/1905 Cairo edition provide a degree of information which is simply not available through the Beirut edition. However, the information they provide needs to be understood in the context of when it was provided/written, which is often elusive. So, although the footnotes supply otherwise unknown information, without knowing the context, that information becomes enlightening but imprecise for historical purposes.

One final example of the multitude of discrepancies between these two modern editions is found in the 1323/1905 Cairo edition. In *Kitāb al-Nikāḥ al-awwal* [21] it reads:

<div dir="rtl">

''(قال) قال مالك لا يثبت النكاح ولا يكون على الرسول شىء من الصداق الذى ضمن(١)

فيمن وكل رجلا على تزويجه³⁶⁵

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365. Note that this line of text is a subject heading.

(قلت) أرأيت ان أمر رجل رجلا أن يزوجه فلانة بألف درهم"[366]

The footnote reads:

"(١) وقال غيره يضمن الرسول وهو على بن زياد اه من هامش الاصل"[367]

Note that the footnote here indicates explicitly that this information is taken from the margin of the original manuscript. Given the number of scribal errors that occur in manuscripts, it is unlikely that the modern editor of the 1323/1905 Cairo edition believed that this marginal notation was simply a scribal correction. For if he indicated that for every instance where the manuscript had a marginal correction for scribal errors then there would be a vast increase in the number of footnotes in the 1323/1905 Cairo edition. Therefore, it is safe to assume that the editor believed that this was an addition to the manuscript from a later writer. However, in the Beirut edition it reads:

"قال: قال مالك: لا يثبت النكاح ولا يكون على الرسول شيء من الضمان الذي ضمن، وقال غيره يضمن الرسول وهو علي بن زياد. قلت: أرأيت إن أمر رجل رجلاً أن يزوجه فلانة بألف درهم،"[368]

In this passage, the discussion centers on whether or not a particular marriage contract is enforceable if the two parties have agreed verbally after the man has asked the woman to "send to him" and he will contract with her in marriage. After she complies, saying that she is satisfied, and he also indicates his satisfaction, he then later comes forward and says that he did not make the transaction. The question put before Ibn al-Qāsim was whether or not the messenger (*rasūl*, i.e. Muḥammad) considered this marriage contract in force. Ibn al-Qāsim's reply was that Mālik said that the marriage contract is not established and that there is no evidence from Muḥammad that the marriage contract is assured. At this point the footnote

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366. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 2:174:13-15.

367. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 2:174n1.

368. See Saḥnūn, *Mudawwana* Beirut, 2:114:25-27.

indicates that Muḥammad said that it is not guaranteed, and this *ḥadīth* comes from Alī b. Ziyād. The footnote further indicates that this information is taken from the margin of the original (*min hāmish al-aṣl*).

The most pertinent observation to make here is that what is found in the footnote of the 1323/1905 Cairo edition is found in the text of the Beirut edition. There is no indication that this information came from the margin of the manuscript. Rather its inclusion in the text in this form indicates one of three possibilities. The editor may have chosen to include it as part of the main text if it had been a marginal notation in the source manuscript he used. As the Beirut edition does not have any footnotes in it at all, this could easily be the case. It is also possible that he was working with a different source manuscript from that of the 1323/1905 Cairo edition in which this statement was a part of its text. This could also easily be the case. A third possibility exists if he was using the 1323/1905 edition as a source, in which case he may simply have chosen to include this footnote into the main text of the work. Without access to the original sources for the two modern editions, it is difficult to reach a conclusion concerning the actions, let alone the intentions, of the editors with regard to the sources. However, this example permits one of two conclusions. The first is that the editor of the Beirut text was more assertive in pursuing an interpretive stance than that of the editor of the 1323/1905 Cairo text, by including a marginal notation as part of a text. However, this conclusion is unlikely given the other examples of the work of the Beirut editor, which instill a greater sense of reliability in that text. A more likely conclusion is that the Beirut editor had access to a different manuscript tradition wherein this part of the text was not a marginal notation but rather part of the main text itself. A different underlying source text for the editor of the Beirut edition is also supported through other examples presented above.

The extensive examples given above provide weighty evidence in favor of the likelihood that the 1994 Beirut edition of the *Mudawwana* used primary source material other than either simply the text of the 1323/1905 Cairo edition or the manuscript used by the 1323/1905 Cairo edition. It has been shown that the differences between these two editions are both too random, as well as unique, to support the idea that the 1994 Beirut edition is simply a reprinted form of the 1323/1905 Cairo edition. Examples have been given involving subject headings, names of *kitāb*s, textual content and footnotes including content manuscript marginal notations. The differences in meaning in these examples are not merely "corrections" to a bad copy due to copyist errors or poorly educated copyists. Rather the differences in meaning suggest parallel streams of thought concerning various areas within the manuscript tradition. Together, these inconsistencies are weighty enough to support the supposition that there are two separate textual sources for these two modern editions.

5.3. Presentation Observations

The issue of presentation plays a small but significant role in the impact that texts make upon their audience. Through presentation, texts are elevated in stature not only by content and form, but also by how the content is presented. A façade can be created upon which the contents may or may not be related. When an editor takes a manuscript with dots missing on it, marginal notations and *kitāb*s that seem like they have a relationship with one another, and he makes a modern text with it, the choices that he makes impact the way in which the text will be received. Visual presentation can be a very important part of the influence that the text will have on the reader or the visual observer. Purchasers can easily decide to buy a set of books for the simple reason they would look good on a bookshelf, providing a good visual presentation.

The editor of the 1323/1905 Cairo edition, along with the publisher, had a role to play in the reception of the *Mudawwana* in the 20th century. How the text has been presented in that edition is significant to the "organic nature of the text." For a text is more than simply the sum of its parts, it is also the belief of the reader of what the text itself is—and this is a factor in what took place between the time of Saḥnūn and that of al-Qābisī as well. The text itself grew far bigger than it really was as a result of the perception by the people of the text itself. This is the influence that the modern editor has on the reception of the text as a result of presentation. The following will present some of the evidence concerning the presentation of the 1323/1905 Cairo edition and the Beirut edition in this regard.

5.3.1. Layout

In terms of page layout, the 1323/1905 Cairo edition has layout features typical of the period in which it was printed.[369] The margins on the top, bottom and sides are almost identical in size, similar to an ancient manuscript layout. There is a single block of writing text, with only a page number added as outside content, being centered and directly under the last line of text. There is no other identifying information on any page. Each new section begins with a centered subject heading bordered on each side with a palmette, the same size as the text line. The subject heading is separated from the main body of the text by a dividing line both above and below it in the same point size as the main text typeface with no additional spacing in between. There are no other distinguishing characteristics of the page

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369. Concerning the layout of modern books mimicking that of a manuscript, see note 341 on page 147 and the reference to Riedel. This appears to be the case also with the 1323/1905 Cairo edition. Visually, the text is reminiscent of the ancient manuscript layout.

    Although printing began in Egypt, mainly through the work of the Būlāq Press in 1822, by the beginning of the 20th century, the Arab world was still far behind the Western world in terms of modern presses. Yet this printing, the centre of which was Cairo, was significant in the *Nahḍa*. The publisher of the 1323/1905 Cairo edition of the *Mudawwana*, Maṭbaʿat al-Saʿāda, is one of the names by which the Būlāq Press is known. See G.W. Shaw, "Maṭbaʿa." *Encyclopaedia of Islam, Second Edition* (Brill Online, 2014). Although Būlāq eventually became known as a significant factor for the rise in the cultural reputation of Egypt in the modern period, their initial priorities in printing were more focused on grammatical works rather than on literary works. See Richard N. Verdery, "The Publications of the Būlāq Press under Muḥammad ʿAlī of Egypt," *Journal of the American Oriental Society* 91 (1) (Jan-Mar 1971), 132.

layout; it is rather plain. (See Figure 11 on page 169 below, presenting a page from the 1323/1905 Cairo edition.)

Similar to the 1323/1905 Cairo edition, the page layout and display of the text of the Beirut edition is a rather simple but modern affair. Each page of text, apart from the title pages of the *kitāb*s, has a single header at the top which includes the name of the *kitāb* currently opened justified to one margin, with the page number of the text on the other margin. A single solid line separates the header from the main text. Contrasting with the typeface of the 1323/1905 Cairo edition, the font of the Beirut edition is modern and very easy to read. Paragraphs are indented. Punctuation aids reading with full colons following the frequent phrases of *qāla*, *qultu*, or even the verb along with the name of the speaker, such as following *qāla* Saḥnūn. Commas are frequently found in the text, providing appropriate breathing spots, but mostly indicating editorial decisions concerning the break up of ideas.[370]

The greater value for reading in the Beirut edition as compared to the 1323/1905 Cairo edition is the use of diacritical markings. No punctuation of any form is used in the 1323/1905 Cairo edition except for parentheses decorated with rosettes around the narrative indicators of the beginning of a new dialog, i.e. around either the name and verb, or where the verb occurs alone without a named subject (e.g. *qāla* Ibn al-Qāsim, or *qultu*) when a back-and-forth exchange of a new topic begins. Otherwise, in the case of the responder in the dialog, always occurring as *qāla*, the verb only appears in regular parentheses. Apart from this, there is no use of commas, periods, semi-colons, full-colons, question marks or any other form of modern punctuation assisting in the reading and interpretation of the text. Other Arabic diacritical markings which are rarely encountered include *tashdīd* and *tanwīn*.

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370. Consistent with other medieval Arabic manuscripts, the only punctuation found in the manuscripts consulted were the occasional circles with dots in them, functioning as a full stop. The addition of punctuation is a major contribution made by editors to the modern publication of ancient Arabic texts. Examples of these markings can been seen in Figure 5 on lines 13 and 19 of CBL ms Ar 4835:55a. See page 127.

بسم الله الرحمن الرحيم

الحمد لله رب العالمين وصلى الله على سيدنا محمد وعلى آله وصحبه وسلم

كتاب الزكاة الاول من المدونة الكبرى

في زكاة الذهب والورق

قلت لعبد الرحمن بن القاسم ماقول مالك فيما زاد على الماثين من الدراهم أيؤخذ منه فيها قلَّ أو كثر بحساب ذلك (فقال) نعم ما زاد على الماثين قلَّ أو كثر يكفيه ربع عشره قلت ما قول مالك بن أنس في رجل له عشرة دنانير ومائة درم (فقال) عليه الزكاة قلت فما قوله في رجل له مائة درم وتسعة دنانير قيمة التسعة الدنانيرمائة درم (فقال) لا زكاة عليه فيها قال وقال مالك بن أنس انما ينظر في هذا الى العدد اذا تكافأ كل دينار بعشرة دراهم قلت الدنانير أو كثرت انما يجمل كل دينار بعشرة دراهم على ما كانت عليه الدراهم في الزمان الاول فان كانت تسعة دنانير وعشرة دراهم ومائة درم وجبت فيها الزكاة فأخذ من الفضة ربع عشرها ومن الدنانير ربع عشرها وهكذا جميع هذه الوجوه ولا تقام الدنانير بالدراهم وقال أشهب وان زكاة العين يجمع فيها الذهب والفضة كما يجمع في زكاة الماشية الضأن الى المعز والجواميس الى البقر والبخت الى الابل العراب سحنون وهي في البيع أصناف مختلفة ولكنها تجمع في الزكاة والعشرة دراهم بالدينار أبداً والدينار بعشرة دراهم في الزكاة أبداً لقول رسول الله صلى الله عليه وسلم فيما ليس فيا دون خمس أواق زكاة والأوقية من الفضة أربعون درهما ولقول رسول الله صلى الله عليه وسلم في عشرين ديناراً نصف دينار فعلم أن الدنانير بعشرة دراهم سنة ماضية قال وقال

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Figure 11. Opening page of *Kitāb al-Zakāt al-awwal*
from the 1323/1905 Cairo edition (Vol. 1:242) .

5.3.2. Volume and Section (*juz'*) Title Pages

Although individual pages of the text of the 1323/1905 Cairo edition may seem plain,

the opening page of each volume, and with the reprint, the first page of each *juz'*, displays a

decorative title page for that *juzʾ*. (See figure 12 on page 171 below of the title page of the

second *juzʾ* from the 1323/1905 Cairo edition.) In the size of the textblock, a rectangular

border is created by multiple palmettes within which the textual information is found. Groups

of text, either in block or line, are separated by the use of text lines decorated with simple

asterisks or palmettes. Each block of text is in a different typeface, ranging from Thuluth and

Diwani to the plain font used for the text of the copy. At the top of the title page, the title of

the work, *al-Mudawwana al-kubrā*, is featured in a larger typeface of Thuluth set in a

rectangular block created by the filling of white space through creative letter order and

diacritics, both language and aesthetic.[371] The title page of each *juzʾ* contains information

concerning the *riwāya*, the editor, a note of its first printing being in a simple form of this

majestic book, as well as a lengthy description of the manuscript and its contents.[372]

5.3.3. *Kitāb* and *Kurrāsa* Title Pages

The beginning of each separate *kitāb* of the text in the 1323/1905 Cairo edition is

normally on a new page with a centered *basmala* in a decorative square of Thuluth typeface,

the *ḥamdala* and the *taṣliya*. An exception to this is the first *juzʾ*, where each *kitāb* simply

follows along in the text with only the separation of the title of the new *kitāb* along with the

basmala and a line separating text and title. It would appear that in the initial stages of

production, a consistent format had not yet been established. Other title pages are sometimes

missing the *ḥamdala* or the *taṣliya*. In three curious cases, the *basmala* is written in a Diwani

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371. Aesthetic diacritics are often used in ornamental Arabic text writing in order to fill empty space or balance the text to make it more pleasing to the eye. See Mohamed Hssini and Azzeddine Lazrek, "Design of Arabic Diacritical Marks," *International Journal of Computer Science Issues* 8 (2011), 263.

372. See page 15 and note 24 for the translated description found on the title page of each *juzʾ* (except the first) of the 1323/1905 Cairo edition.

typeface, completely inconsistent with the rest of the title pages. No reason for this seems apparent.[373] *Kitāb al-Qaḍāʾ*, as an exception, does not begin with a centered *basmala*. As
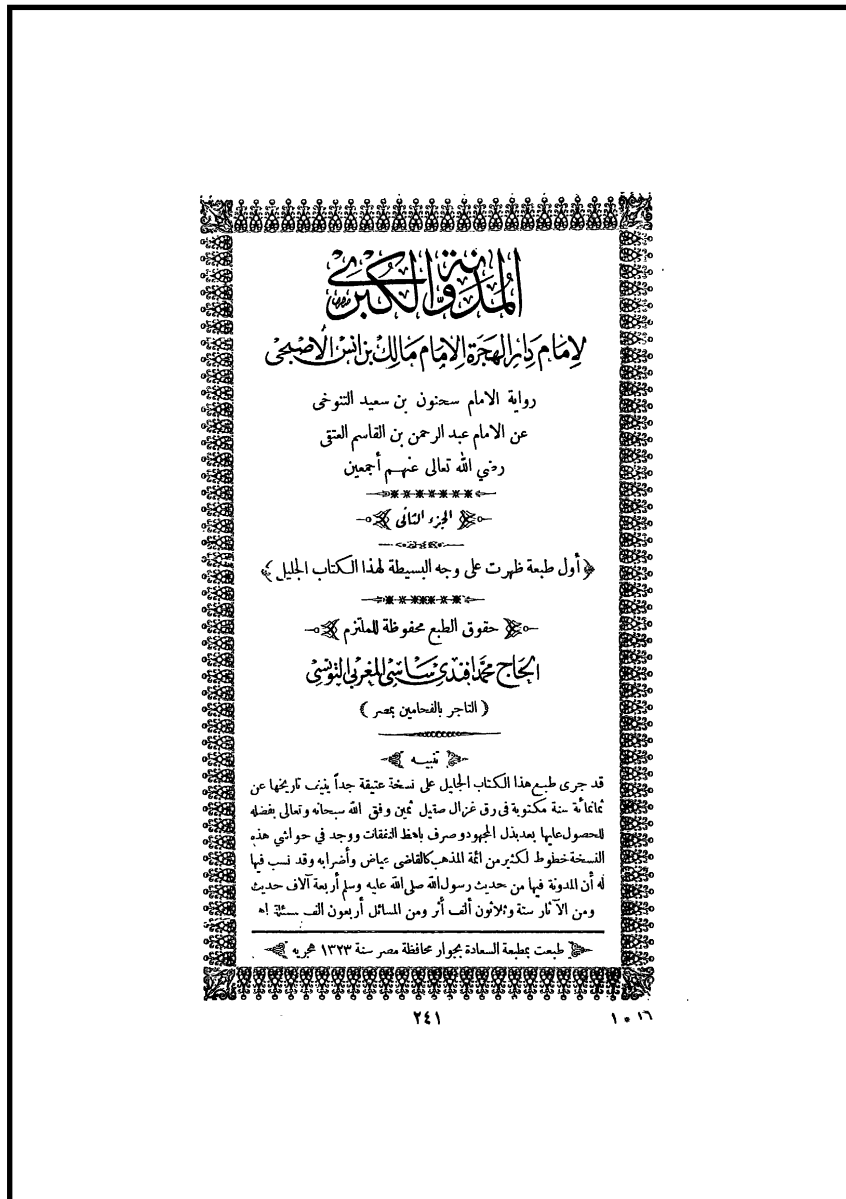
Figure 12. Title page of juzʾ 2 of the 1323/1905 Cairo edition (Vol. 1:241).

detailed earlier (see section 5.2.1, specifically page 113, concerning the discussion of *Kitāb al-Qaḍāʾ*), it may not have been considered its own separate *kitāb* in the manuscripts given

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373. The three cases of Diwani script for the *basmala* at the beginning of the *kitāb* are *Kitāb al-Ḥajj al-awwal*, *Kitāb al-Dhaḥāyā* and *Kitāb al-Sariqa*. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 1:360, 2:69 and 6:265.

the way in which it is found in the modern editions and one manuscript. Inconsistency exists

concerning the vowelization of the *basmala*; the majority of the *kitāb*s of the *Mudawwana* in

the Beirut edition do not have vowels in place (i.e. *fatḥa*, *ḍamma* and *kasra*) in the *basmala*,

yet, for some unknown reason in some of the *kitāb*s in the third of four volumes, many of the

*kitāb*s have a vowelled *basmala* in place.[374] Under the *basmala*, many, but certainly not all of

the *kitāb*s have some format of the *taṣliya*. In volume three, only five *kitāb*s have some form

of the *taṣliya*, while in volume four the *taṣliya* is not found at the beginning of any *kitāb* at

all. When a *taṣliya* is in place, in some cases Muḥammad's status as *nabī* is mentioned,

sometimes his family is also mentioned, and in some cases his companions are mentioned.

The formatting of the *taṣliya* is extremely inconsistent. The name of the *kitāb* is then centered

on the next line of text separated from the above with a line of white space. One more line of

white space separates the name of the *kitāb* with the first subject heading. Once the text

begins, it is only broken up by subject headings.

Unlike the modern editions, the manuscripts do not have volume or *juzʾ* title pages.

Title pages of a *kurrāsa* in the manuscripts function visually in the same way as the *juzʾ* title

pages of the modern volumes. Each *kitāb* in the manuscripts begins with the *basmala* and

often the *taṣliya* as well.[375] Other than being centered on the top line of text with the *basmala*

including a *kashīda* to justify the line. These phrases appear in the manuscripts as regular

text. So the *kurrāsa* title pages function differently than the first pages of a *kitāb* in the

modern editions.

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374. This seems a very unusual observation as the remainder of the text appears to be formatted quite consistently throughout. It is very possible that different individuals were responsible for different presentation details in the modern publishing company.

375. *Kitāb al-Salam al-thānī* does not have a *taṣliya* nor is the *basmala* centered. This is likely due to the fact that it begins the second (*al-thānī*) portion of the subject rather than the beginning (*al-awwal*), considered simply a continuation of the previous *kitāb* therefore not needing the *taṣliya*.

More than simply recognizing the text, the form of the presentation of the *kurrāsa* title pages also conveys significant information. The title pages within BL ms Or 6586 have a simple format, the essential information being centered on the page, both from the top and bottom margins as well as from the left and right margins.[376] There are two lines of larger script, at least double the size of the smaller script, indicating the name(s) of the *kitāb*(s) contained within the *kurrāsa* and the listing of the *riwāya*. Of the four title pages found within BL ms Or 6586, all of them have just two lines of text in larger script. The size of the script is not adjusted considering the number of words needed on the title page, rather the number of words which are presented in larger script is limited by the space of two lines of text. So if the name(s) of the *kitāb*(s) is (are) long, the names of the transmitters will drop down to the third, fourth and possibly fifth lines of text. After the second line of text, all words are presented in a smaller script. For example, one title page reads *Kitāb al-Sharika min al-Mudawwana riwāyat Saḥnūn b. Saʿīd al-Tanūkhī ʿan ʿAbd al-Raḥmān b. al-Qāsim al-ʿUtaqī ʿan Mālik b. Anas al-Aṣbaḥī*.[377] (Different size script on the font in the BL ms Or 6586 is similar to that displayed in the CBL ms Ar 4835. See Figure 13 on page 175 below.) The use of a larger script gives a sense of more emphasis being placed on the content of the text itself, rather than on those that were responsible for its transmission.

Titles pages from the CBL mss Ar 3006 and 4835 are consistent amongst themselves in format and design. Consisting of four to five lines of text centered on the page, the first two lines contain the name(s) of the *kitāb*(s), followed by the information concerning the *riwāya*. The visual imagery of the title page begins on the top line of each title page, a centered horizontal marker created by an elongated *bāʾ*, formed from the last letter in the word *kitāb*. This centers the top line with the word *kitāb* on one side of the balance and the

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376. See BL ms Or 6586:1a, 29a, 53a and 73a.

377. See BL ms Or 6586:53a.

first word of the *kitāb* itself providing the counterbalance. The subsequent information within these first two lines of text, if the titles of the *kitāb*s are not too long, will begin the information concerning the *riwāya*. Two lines of text are not enough to complete, and in some cases do not even begin, the *riwāya*. When part of the *riwāya* is within these two lines, that part consists only of the name of Saḥnūn, so it is only Saḥnūn's name, which sometimes figures in larger script within the first two lines. These first two lines of text are rather large and very distinct. The following line or two, which completes the information concerning Ibn al-Qāsim, is significantly smaller in size and is in simple script, whereas the previous portion is in highly pronounced Maghribī script. The last line of the title pages always presents the name of Mālik, again in large, pronounced Maghribī script, with a very distinctive form of Mālik's *nisba*, al-Aṣbaḥī. (See figure 13 on page 175 below for an example.) The last four letters of Mālik's *nisba*, *ṣad*, *bāʾ*, *ḥāʾ* and *yāʾ*, create this unique visual image. The *ṣad* creates an oval or rectangular shape with its upper and lower lines being elongated. The *bāʾ*, hardly noticed, sits just beside the end of the *ṣād*, creating almost a twin for the upper portion of the following *ḥāʾ*. In creating the right terminus of the *ḥāʾ*, which normally sits on, or sometimes slightly above, the base line of writing, the scribe extends this portion of the letter lower than the *ṣād*, and parallel with the horizontal lines of the letter *ṣād*, creating a third parallel in the visual form, justifying its length with the beginning of the *ṣād*. A fourth and final line of this set of parallel forms is completed with the *yāʾ*, which reverses from the usual direction of going to the left, and sweeps underneath the upper three parallel lines, again justifying with the right end of the group of letters. Together these four letters create a visual image of four parallel lines stacked on top of each other, each line connected with another either on the right or the left sides, looking almost like the tines on the end of a modern day fork. This completes the visual aspect of the title page.

Figure 13. CBL ms Ar 4835:1a. Title page of the *kurrāsa* of *Kitāb al-Mudabbar waʾl-walāʾ waʾl-mawārīth waʾl-ansāb*. By permission of the Chester Beatty Library.

The formatting of the title pages in these manuscripts communicates several things. Both Ibn al-Qāsim and Saḥnūn are credited with the transmission process, however given this rendering and the script size, Ibn al-Qāsim is seen in a lesser light than that of Saḥnūn, as Saḥnūn's name often appears on the second line (although not in the figure above as the *kitāb* titles take up too much room) in larger script. Ibn al-Qāsim's name never appears in larger script. Although Ibn al-Qāsim is a necessary part of the transmission, his name in a smaller script and with no sense of prominence whatsoever on the title page seems to give him a place of lesser honour. The prominence of Mālik's name, which occurs in the same special and significant way on the last line of the title page of each *kitāb*, makes it clear that he is given a place of special honour. Additionally, the significance of his *nisba* being given a special form, drawing the eye towards it, sends the message that Mālik is given the place of honour in this rendering of the text, in spite of the fact that he would not have been aware of

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its forthcoming existence. (See also section 6.5 on page 205 regarding the role of Mālik in the creation of the *Mudawwana*.) The honour with which Mālik is acknowledged here also communicates a sense of authority that goes along with his name. This authority is communicated both visually and textually, for his name comes at the end of this *isnād*. In this way, he is recognized on the title pages of the *kitāb*s of this text as the final necessary authority.

5.3.4. Subject Headings

As described above in section 5.2.3 on page 121, subject headings are centered on the line and separated from the main text by a line of white space above and below. They are written in a larger size script than the main text and in a different colour of ink presumably to make them distinct from the regular text. In BL ms Or 6586 the subject headings are most often consistent in form with each other—planned on a line, centered, having either an entire line to itself, or most of a line if there are only a few words of the previous section at the beginning of the line of text. On occasion in *kurrāsa* 37, containing *Kitāb al-Jawāʾiḥ waʾl-musāqāh waʾl-luqaṭa*, the subject headings share the line with a few words of text from the successive section, to which the subject heading refers. However, the subject heading is still centered on the line of text. In one place the letter *bāʾ*, which occurs at the end of the last word of the subject heading, has a rather elongated formation, creating a visual sense of the centeredness of the subject heading, whereas if the *bāʾ* had not been elongated, it would not have had a centered appearance.[378] This practice does not appear to be exclusive to particular letters—it occurs with several: *jīm*,[379] *ghayn*,[380] and *tāʾ*.[381] This practice is not exclusive to

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378. See BL ms Or 6586:46b:6.

379. See BL ms Or 6586:39b:21.

380. See BL ms Or 6586:35a:20.

381. See BL ms Or 6586:37a:14.

subject headings; it can even occur in plain text, for example with the letter *khāʾ*.[382] Further examples are numerous. The practice appears to be arbitrary, as no pattern can be determined for when it was employed. Regardless of this irregularity, it demonstrates that care, of some degree, was taken by the copyist to give the text a particular visual form, whether that be simply for visual effect or to assist in the common scribal practice of justifying the text.[383]

In the CBL ms Ar 3006 and the CBL ms Ar 4835 subject headings are also distinct from the main text being centered on the line with additional space above and below separating them out from the main text. (See Figure 7 of CBL ms Ar4835:32a on page 140 for an example of this.) This general format is also employed in the Beirut edition with the subject heading being written in a larger size font and with a boldface type. The 1323/1905 Cairo edition distinguishes the subject heading with a single line above and below the subject heading and distinctive arabesque designs on both the right and left of the subject heading to separate them from the main body of the text. The typeface of the subject heading though is identical to that used in the main body of the text. See figure 11 on page 169 above for an example.

5.3.5. Within the Text

As mentioned previously in section 5.2.4.6 on page 153, modern editors at times must make choices affecting the textual reading in order to reduce ambiguity between similar letter forms. Discrepancies between modern editions are evidence of these choices. Although more a matter of content rather than a pure form of presentation changes, these choices do affect the way the text presents. However, regular inclusion of quoted content, such as Qurʾānic text and *ḥadīth* are treated in different ways in different modern editions.

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382. See BL ms Or 6586:37b:1.

383. It was a goal of manuscript scribes to create a square or rectangular block of text on the page which was justified. See Gacek, *Vademecum*, 146.

5.3.5.1. Quotations from the Qurʾān and *ḥadīth*

Within the body of the text itself, formatting plays a role in the presentation of both *ḥadīth* and verses quoted from the Qurʾān but in one edition only. The 1323/1905 Cairo edition introduces *ḥadīth* with the *taṣliya* but there are no other visual cues to indicate that the text to follow is different in any way. Qurʾānic quotations do not receive any special textual treatment whatsoever. The typeface is the same as any other part of the regular text, and no references are given of any sort other than the *isnād*, if it is included, as part of the regular text. However, in the Beirut edition, when the name Muḥammad or the title *rasūl* is mentioned in the text, immediately following is the *taṣliya* prior to the quotation of *ḥadīth*. The form of the *taṣliya* is a decorative three line miniature which sits on the line of the text, similar in form to the unicode ligature:

In the event that a *ḥadīth* is quoted, a full colon follows the *taṣliya* and the *ḥadīth* is enclosed with double parentheses, the quoted text presented in boldface type. When a verse is quoted from the Qurʾān, the text is set apart in a pair of single parentheses overlaid with a floral type of *shamsa*. Following the quote, the reference for the verse is given within square brackets providing both the full name of the *sūra* followed by the verse number. When comparing the presentation of Qurʾānic quotations between the modern editions and the ancient manuscripts, it is clear that the modern editors have greatly enhanced the format. The manuscripts do not contain any special formatting surrounding or in the script of the text of the quote. References to *sūra* names are also not found in the manuscripts. These are both modern additions to the ancient presentation. In the case of *ḥadīth* found in the manuscripts, the *taṣliya* precedes the *ḥadīth*, yet written as normal text with nothing distinctive about it.

5.3.6. Conclusions of *Kitāb*s and Concluding Statements

In the modern editions, the conclusion of each *kitāb* is generally indicated with a clear statement that the *kitāb* has concluded, often, but not always, accompanied by a *ḥamdala* and a *taṣliya*. Inconsistency is found in the added creativity that goes into the final form of some of the *kitāb*s. See figure 14 below on page 180 for an example from the concluding portion of *Kitāb al-Ḥajj al-thānī* from the 1323/1905 Cairo edition with each successive line of text at the end of the *kitāb* having a shorter line length creating an inverted triangle.[384] Consistent with the ancient manuscripts consulted, there is a long tradition of a concluding statement accompanying the end of each *kitāb*.

Concerning the presentation of the indexes within the modern editions, text in the indexes in the 1323/1905 Cairo edition is smaller in typeface than the main body of the text, which is already difficult to read. Given the condensed nature of the index, it is not easy to find the passages for which one is looking. The indexes of the Beirut edition are rather easier to navigate as they have only one column of text, the typeface is larger, and there are breaks in the column between *kitāb*s. In addition, *kitāb* titles in the Beirut edition are centered over the column so it is easier to locate the divisions between them.

5.3.7. Presentation Conclusions

As discussed above, concerning the role of the modern editor in the formation of the *Mudawwana*,[385] how the text is presented affects the reader's reception of the text beyond the meaning of the text. For example when each *kitāb* begins with a stylized form of the *basmala* or there is a pictorial ligature for the *taṣliya*, these artistic additions add meaning in terms of

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384. This layout is not new to Arabic works in the modern period. Examples can be found of other ancient manuscripts which share this motif. See, for example, the pedigree of Zubayr b. Abī Salmā recorded in this style in Leiden ms Or 14.031:40a as published in Witkam, *Catalogue*, 58.

385. See above section 4.4 beginning on page 84.

the significance with which the reader will receive the text, thus changing its receptive

meaning.[386] Artistic additions create symbolic representations holding meaning not found in

the text itself. When a reader associates particular symbols as having a personal religious

value and then sees those symbols in the text, the value they associate with that symbol is

(قال) أرى ذلك بمـنزلة الذى رجع بعيب أصابه في الهدى بعد ما قلده

﴿قلت﴾ والضحايا لو أن رجلا جنى عليها فأخذ صاحبها لجنايتها أرشا

وكيف يصنع بها ان أصاب بها عيا حين اشتراها أصابها

عمياء أو عوراء كيف يصنع (قال) الضحايا فى قول مالك

ليست بمنزلة الهدى الضحايا اذا أصاب بها عيا

ردها وأخذ ثمنها فاشترى به بدلها وكذلك

ان جنى على هذه الضحايا جان أخذ

صاحبها منه عقل ما جنى وأبدل

هذه الضحية واشـترى

غيرها ولا يذبح هذه

الـتى دخلها

العيب

﴿تم كتاب الحج الثانى من المدونة الكبرى بحمد الله وعونه﴾

﴿ويليه كتاب الحج الثالث﴾

Figure 14. 1323/1905 Cairo edition. Conclusion of *Kitāb al-Ḥajj* al-thānī demonstrating artistic typesetting in the shape of an inverted triangle (Vol. 1:482).

386. This principle props up an entire arm of the modern advertising industry. Graphic design focuses on how images are portrayed in order to manipulate consumers to make a particular desired response. How language is received as a result of visual presentation is discussed by Swann. See Cal Swann, *Language and Typography* (New York: Van Nostrand Reinhold, 1991), 70.

then transferred to the text itself. In this sense, although the editor has not technically changed the text, the meaning has been altered through the use of form. As a result, the editor adds to the meaning of the text, providing the reader with a newly perceived emphasis or significance. Examples given above include stylized title pages to *kitāb*s, rosettes around narrative signals, and a decorative *taşliya* which clearly stands out from the text. It must be remembered that these all lead to a contextual change in meaning, rather than a strictly textual change. The supratextual context of the text gives added meaning for the reader.

The modern editor himself has entered into the role of compositor. Yet as compositor, his role has not been merely to arrange the type for the printing of the document, rather more deeply than that he has participated in the creation of a new composition, adding to the layers of composition his own work—for the choice of volume division, *kitāb* arrangement, visual presentation, vowelling of the words all contribute towards something greater. More than compositor, the editor has also given a new status to the text for the average reader with symbolic decoration to give the reader the impression visually of an importance to the text. He has conveyed an importance to the text through visual means. In addition to responsibilities as editor to ensure that the text is accessible to the reader, the editors of the modern editions have influenced the reception of the text in their choices of format and presentation, adding to the final text artistic and religious symbols which influence the reader's understanding of the value of the text. The editor has become one of the contributors to the work as a whole through his participation in its modern presentation.

5.4. Summary to this Point

A summary of the research to this point would be helpful. Differences in textual variants within the *Mudawwana* demonstrate a degree of instability with the text over time. Despite this instability, a vast majority of the text shows consistency. An immense copy of the text dates from 476/1083-84, showing a collection of most of the recognized *kitāb*s of the work being found together from just under 250 years from the date of the death of the attributed author/writer. Fragments have been found dating prior to this manuscript, but no published research has demonstrated the degree to which these earlier fragments would attest to a more complete tradition prior to the 5th/11th century. Modern editions seem to reflect two varying traditions. Modern editors themselves have played a part in the creation of the modern *al-Mudawwana al-kubrā*, both in textual decisions as well as presentation. Given the textual inconsistencies, and the number of manuscripts available of the *Mudawwana* with further potential variant traditions, a critical edition of the text is highly warranted for further research to help understand the nature of its composition and collation to a greater degree.

Having a better understanding of the creation of the book of the *Mudawwana*, it is now time to turn to the content of the text itself, in order to try to better understand its composition from what we can understand of an original author and his intent. This is the goal of the next chapter.

Chapter 6
Textual Investigation in the *Mudawwana*

A textual investigation of the *Mudawwana* will help to better understand the nature of the text itself at the micro level. It is hoped that this will lead to a better understanding of the composition of not only this specific portion of the text, but the text as a whole. Given that it is a fundamental (read: primary/initial/foundational) legal text within the Mālikī *madhhab*, the concept of authority is expected to play a significant role in the statements that are made. How this authority is established through the text will be a key aspect of the investigation.

As mentioned previously, content throughout the *Mudawwana* is presented in the form of *masāʾil wa-ajwiba* (questions and answers). Texts in the form of *masāʾil* exist prior to the time of Saḥnūn, one at least dealing with legal matters attributed to a member of the Hanafiyya tribe.[387] It is very possible that during his *riḥla* to Iraq, Asad b. al-Furāt was exposed to and influenced by this form, which may have influenced Saḥnūn. According to Daiber, *masāʾil* was the format of some of the earliest texts dealing with philological and textual problems of the Qurʾān. *Kitāb al-Masāʾil*, an apologetic text believed to have influenced the conversion to Islam by a Jew from Medina, ʿAbd Allāh b. Salām (d. 43/663-4), provides evidence that Mālik would have been familiar with this form, and thus it would not have been innovative when produced within the Mālikī school. Having been available to those who are believed to have influenced the formation of the Mālikī *madhhab*, it would not have been a development for the *Mudawwana* to take this form in its presentation of legal work.

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387. See Al-Ḥasan b. Muḥammad b. al-Ḥanafiyya (d. ca. 100/718), *al-Risāla fī ʾl-radd ʿalā ʾl-Qadariyya*, in *Anfänge muslimischer Theologie: zwei antiqadaritische Traktate aus dem ersten Jahrhundert der Hiğra*, J. Van Ess, ed. (Beirut: Orient-Institut, 1977) as cited in H. Daiber, "Masāʾil Wa-Adjwiba," *Encyclopaedia of Islam, Second Edition* (Brill Online, 2013).

Many previous legal works from the period of Mālik, and later that of Saḥnūn, relied upon the use of *ḥadīth* in order to communicate teaching. Another major legal work from within the Mālikī *madhhab*, accredited to Mālik, is the *Muwaṭṭaʾ*, based almost exclusively on *ḥadīth*. In contrast, the *Mudawwana*, although it contains *ḥadīth*, is based much more on *raʾy*. The Mecca edition of the *Mudawwana* records about 860 *ḥadīth* in its index as found within the text. Given that the text is in many editions about 2,500 pages long, the number of *ḥadīth* recorded is relatively small compared to prior legal works. Thus the format of *masāʾil* is a practical vehicle to transmit teaching without the need to rely heavily on *ḥadīth*. A question and answer format, as opposed to narrative or didactic teaching, is sympathetic to the expression of opinion.

6.1. *Kitāb al-Qisma al-awwal waʾl-thānī*

In examining the *Mudawwana*, a very small portion has been chosen from *Kitāb al-Qisma al-thānī* (the second book of divisions). This *kitāb* occurs approximately half way through the fourth (last) volume of the Beirut edition, and at the end of the second last (fifth) volume of the 1323/1905 Cairo edition. Divisions is a topic of great importance for Muslims, as dividing property is often required following the death of a family member. Inheritance law, which is found in only two *sūra*s of the Qurʾān,[388] can be very complicated in its formulaic calculations depending on the surviving family members. However, to properly receive inheritance, and be able to independently control a property, often requires having the property divided according to legal principles. The two books of divisions provide scenarios wherein different types of property or ownership situations are explored in order to identify how they can be legally divided between joint owners. Thus, when a family member dies, and their property is not already clearly divided into quarters or eighths or sixteenths, depending

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388. The passages which deal with how an estate should be specifically divided amongst its heirs include *Sūrat al-Nisāʾ* (4):11, 12 and 176 and *Sūrat al-Baqara* (2):180-182 and 240. Other parts of these *sūra*s discuss inheritance relationships amongst family members more generally as well.

on the calculations required in that instance, the principles outlined in these two books can assist in determining the best way for these situations to be resolved. Although the emphasis in the *kitāb*s of division is on property, goods are also discussed as to whether or not they can be divided. Subjects discussed regarding the permissibility of division within the first and second *kitāb*s include houses, land—in varying forms: with/without trees, wells, fields, springs—produce, seed, milk in the udders of animals, unsheared wool, finances, the supervision of the finances of a minor, inheritances, textiles, livestock, jewellery, and also more complicated matters of division, mostly found in the second *kitāb*. A translation of the subject headings for both the first and second book of divisions can be found in Appendix G. Although the content of the text within these two *kitāb*s is interesting, this research focuses on the structure of the content and its composition, rather than the content itself.

The content of *Kitāb al-Qisma al-awwal* and *al-thānī* seems to lack a strong organizing principle. When surveying the topics dealt with in these two *kitāb*s, the only observation regarding organization may be that the situations dealt with in *Kitāb al-Qisma al-thānī* appears a little more complicated than that of the first *kitāb*. Questions appear either more obscure or dealing with the results of a division where something has gone wrong, such as the goods spoiled, or money or another commodity is added in to the equation.

There is little use of Qurʾānic text or *ḥadīth* in these two *kitāb*s.[389] The entire text of the *Mudawwana* has a total of 124 quotations of Qurʾanic text. Of these, only one occurs within the two *kitāb*s of *al-Qisma*, that of *Surāt al-Nisāʾ* 7, referenced twice. One occurs within the portion of text translated below. The second citation of *Surāt al-Nisāʾ* 7 occurs just

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389. It is not a new observation that Islamic law is founded on Qurʾān and *ḥadīth*, nor is it a new observation that very little of these two sources are actually present the law in detail. Islamic law is understood to be merely presented in broad strokes, and more fully detailed and applied through the "carriers" of Islamic law—the jurists. Hallaq has rightly observed that what is understood to be the revelation of Allāh is simply the "basic building blocks of the law with no more than intimations of a blue-print as to how the House of Law should be constructed and formed out of these blocks." See Wael Hallaq, "Juristic Authority vs. State Power: The Legal Crises of Modern Islam," *Journal of Law and Religion* 19 (2003), 245.

a few pages later in the *Mudawwana* under the subject heading "Concerning the division of houses and rooms and (flat) rooftops (*suṭūḥ*)."[390] The full text of the *āya* quoted reads: "From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large—a determinate share."[391] However, only one portion of it is quoted in both places, that being: "whether the property be small or large—a determinate share." In al-Qurṭubī's *tafsīr, al-Jāmiʿ li-aḥkām al-Qurʾān*, one section describes the sayings of several *fuqahāʾ* including the sayings of Mālik, Abū Ḥanīfa and the opinion of Ibn al-Qāsim.[392] So the Qurʾānic commentaries include references to the sayings of the *fuqahāʾ*, some of which are recorded in the *Mudawwana*. The commentary of both al-Qurṭubī and Ibn al-ʿArabī will be referenced later following the presentation of the translated portion of the text.

Only one *ḥadīth* is quoted within both of these *kitāb*s—"*lā ḍarara wa-lā ḍirāra,*"[393] meaning "There should be no harm nor the reciprocation of harm," or "Do not harm or reciprocate harm." Schacht has translated it as, "there shall be no damage and no mutual infliction of damage."[394] This particular *ḥadīth* is quoted seven times within the *Mudawwana*. In addition to the one quotation of this *ḥadīth* in *Kitāb al-Qisma al-thānī*,[395] it can also be

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390. See Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 5:521.

391. A. Yusuf ʿAlī, translator, *The Meaning of the Holy Qurʾān: Text, Translation and Commentary* (Beltsville, MD: Amana Publications, 1997).

392. Muḥammad b. Aḥmad al-Qurṭubī, *al-Jāmiʿ li-aḥkām al-Qurʾān* (Dar al-Qalam: Cairo, 1966).

393. According to Wensinck this *ḥadīth* can be found in Ibn Māja's *Aḥkām* (18), Mālik's *Muwaṭṭaʾ* (*Kitāb Aqḍiya* 31), Ibn Ḥanbal's *Musnad* (1:313, 5:327). See A.J. Wensinck et al., *Concordance et indices de la Tradition Musulmane: Les six livres, le Musnad d'Al-Dārimī, Le Muwaṭṭaʾ de Mālik, le Musnad de Aḥmad Ibn Ḥanbal* (Leiden: Brill, 1955), 3:496-97. *Ḥadīth* are still used in contemporary times to preach to the masses. On 21 August 2013 a local Tunis newspaper published in their "Eyes and Announcements" column this *ḥadīth* in the section labelled "*Yā Fatāḥ, yā razāq.*" In addition to the *nabī*, the *isnād* included Abū Saʿīd al-Khudrī. See "Yā fatāḥ yā razāq." *al-Ṣarīḥ*, 21 August 2013, 2.

394. Schacht, *Origins*, 183.

395. See Saḥnūn, *Mudawwana* Beirut, 4:313.

found twice in *Kitāb al-Nikāḥ al-awwal*,[396] twice in *Kitāb Kirāʾ al-dūr waʾl-araḍīn*,[397] once in *Kitāb al-Shufʿa al-thānī*,[398] and once in *Kitāb Ḥarīm al-ābār*.[399] One interpretation of this *ḥadīth* is that *ḍarara* refers to the act of someone harming someone else but with no profit to himself, with *ḍirāra* being the act of one who wrongs someone else for his own profit.[400] Harm can be classified into two general categories, according to Muḥammad al-Tāhir b. Āshūr. The first is harm which should be avoided and/or prevented at all costs, and the second is harm which is unavoidable and is therefore allowable.[401] The concept of whether or not something was considered harmful is what guided decisions concerning divisions of property within the *Mudawwana*.

Opinions given in the *Mudawwana* appear to be based on very little source material. This little portion of source material seems to be applied very extensively. In situations where appropriate source material cannot be found to provide answers which arise, new opinions are necessary. Yet it is indicated in the text that any new opinions presented are based on previously known and accepted principles and ideas from the teacher who came before, Mālik b. Anas.

After reading a few entries, one begins to feel a rhythm for the scenarios presented in the *Mudawwana*, at least in this section of it. The framework of the format is of a conversation with a question being asked, obviously from an inquirer to a more learned teacher. The words *qāla* and *qultu* appear very frequently in the text. In these two books, *qāla*

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396. See Saḥnūn, *Mudawwana* Beirut, 2:106-07.

397. See Saḥnūn, *Mudawwana* Beirut, 3:526 and 530-31.

398. See Saḥnūn, *Mudawwana* Beirut, 4:243.

399. See Saḥnūn, *Mudawwana* Beirut, 4:470.

400. Hakim accredits this interpretation to Muḥammad b. ʿAbd al-Salām al-Khushanī who passed it on to ʿIsā b. Mūsā b. al-Imām al-Tutaylī (d. 386/996). See Hakim, *Arabic-Islamic Cities*, 22.

401. Āshūr is cited by Hakim, *Arabic-Islamic Cities*, 22.

appears 682 times and *qultu* 331 times. With a word count in these two books of over 22,000 words, almost five per-cent of the words in the text are taken up with these dialog markers. Bear in mind that the word *qāla* is often used in reference to Mālik, as in *qāla* Mālik (121 times). With only 68 total subjects discussed in these two *kitāb*s, simply the phrase, "Mālik said" occuring more than 120 times means that in each scenario there is an average of almost two times where Mālik's words are quoted or referenced. Given these figures, it is evident that for every time "I" said something, i.e. Saḥnūn, or the first-person speaker in a *qultu* form (331), there is an average of two replies, e.g. *qāla* (682) or possibly *qāla* Mālik (121 of the 682). Highly dependent on this conversational form, the text does not give the sense of an apologetic or of a treatise, rather it presents scenarios that, although possible, are hardly common.

Each situation brought up for discussion begins with the disciple, understood to be Saḥnūn and sometimes mentioned that way, asking his presumed teacher, Ibn al-Qāsim, his opinion of the presumably hypothetical situation. Most often Ibn al-Qāsim provides a reply which is qualified by something that Mālik has said in regards to this particular type of situation or a broader one which could apply to this situation. Sometimes, not having heard Mālik say anything about a particular topic, Ibn al-Qāsim will state that outright, e.g. *lam asmaʿ min Mālik fīhā shayʾ*. In which case, Ibn al-Qāsim would continue by giving his own opinion. He would assert that he gives this particular opinion based on something else that Mālik has said, meaning it would have some sort of analagous relationship. In no case does Ibn al-Qāsim simply give his own opinion based on his own authority without reference to some other source, whether that be Mālik's direct discussion of the subject, another subject, but somehow related, or a reference to *ḥadīth* or Qurʾānic text. Once, in these two *kitāb*s, the *ḥadīth* concerning harm is invoked in this type of situation.

In a clear example of this, in *Kitāb al-Qisma al-thānī*, a subject is discussed concerning the division of a road and a wall.[402] Ibn al-Qāsim answers the first question in the exchange which concerns the division of a pathway (*ṭarīq*) within a property (*dār*) if each of the parties refuses to have it divided. The answer given is very brief with Ibn al-Qāsim stating that this does not divide according to Mālik. An immediate follow-on question is whether or not a wall shared between two parties divides when one of them refuses to have it divided. In this situation Ibn al-Qāsim states that he has heard nothing from Mālik on this subject, but goes on to give his opinion, *illā annī arā*.[403] The beginning of his opinion indicates that if the division does not cause harm (*in kāna lā yudkhilu dhalika ḍarar*), then it is divisible. As one reads further into the subject of divisions, it is quite clear that this simple idea of the causing of harm is the essential, and seemingly only, stipulation which determines whether or not the division of certain things is forbidden. When two or more parties share in the ownership of something, and one or more of the owners chooses to have the property in question divided, it must be divided, even if opposed by the other parties, unless the division would somehow cause harm. The idea of what exactly harm is, and who can determine whether or not something is harmful, is not a subject which is discussed. It seems that the harm caused is apparent to those deciding, and it is clear for them with no explanation of the harm caused being necessary.

This style of exchange implies a sense of layering in the conversation, which, admittedly, is part of all conversation, a back and forth between two or more parties. Although the differentiating characteristic in the exchanges between "I" (*qultu*) and "he" (*qāla*) here in the *Mudawwana* is the continual interjection of the third "missing" voice of Mālik, invoked in times of necessity to either approve a particular situation along with the

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402. See Saḥnūn, *Mudawwana* Beirut, 4:306.

403. See Saḥnūn, *Mudawwana* Beirut, 4:307:2.

saying that supports/demonstrates its approval, or an acknowlegement of a lacuna in his cache/repository of sayings. In instances where nothing is known to have been pronounced, a new dictum must be given, but one based on what has previously been proclaimed. For this, Ibn al-Qāsim uses his experience, knowledge and analogic capabilities to come up with what will become a new guideline of permissibility. In the layering of the text, one can see the theme of authority rise to the surface.

6.2. Translated Text

The passage chosen for investigation is found almost two-thirds of the way through *Kitāb al-Qisma al-thānī*. The Arabic text, formatted schematically to demonstrate clausal dependence, can be found in Appendix H. The section is introduced with the subject heading "Concerning two men who divide a wall in two, and one of them adds in payment for the other money or liquid assets or for a deferment." On the following page begins the English translation of the sample which I have chosen for my text.[404] Lines have been numbered in order to simplify referencing specific parts of the text.

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404. This passage can be found in the two modern editions consulted as follows: Saḥnūn, *Mudawwana* Beirut, 4:309-10. Saḥnūn, *Mudawwana* 1323/1905 Cairo edition, 5:517-18. Appendix F lists discrepancies which occur in this text between the 1323/1905 Cairo edition and the Beirut edition. A brief analysis of the discrepancies is included in the chart of discrepancies.

1   I said, "What is your opinion [about the following]: Two men own a

2   property (*dār*) that is divided between them. One of them takes a part and gives a

3   part to the other on the condition that the one gives the other a slave or cash

4   (*darāhim*) or a commodity of full measure[405] or a promise of payment. What

5   would the situation be if the one who gives it, paying with a deferment of

6   payment, does not specify a time frame?" He said, "This is permissible when the

7   time frame is specified, and when there is a prescribed financial obligation; it is

8   only not right when that person is to pay it at an unspecified later date. What is

9   permissible in this situation is what is permissible in sales, and what is invalidated

10   in this situation is what is invalidated in sales." He said, "This is my opinion

11   because Mālik said there is nothing wrong (*lā bā's*) if one of them takes a part of

12   the property and the other a part from the property on the condition that one of

13   them provides additional money (*danānīr*) for the other."

14   I said, "It is similar if the property is divided among the two of them and

15   one takes a part and the other a part on the condition that one of them donates an

16   acceptable charitable gift on behalf of his co-owner or gives him an acceptable

17   gift." He said, "Mālik said, 'This is permissible.' "

18   I said, "What if a man buys a passageway in his house from someone

19   without buying any other part of the house which has the potential to be the object

20   of a bequest; is this permissible?" He said, "This is permissible according to

21   Mālik. "

22   I said, "What are the sayings of Mālik in the case of a small house (*bayt*)

23   which is owned together by fellow tribesmen and the portion that belongs to one

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405. Implied in this is that the commodity is not silver or gold.

| 24 | of them is too small to be of benefit if it is divided further. Can it be divided or |
| 25 | not?" |

26	He said, "Mālik said, 'It is divisible even if there is a portion belonging to
27	one of them which is of no benefit to him if it is divided amongst them. [This is]
28	because Allāh, the exalted (*ta ʿālā*),[406] said in his book, "Whether the portion be
29	small or large—[it is] a legal share." [407] Whether the portion of it is little or the
30	portion of it is large, it is the same. It divides between them if they request the
31	division and this requirement cannot be disregarded even if the [resulting] portion
32	is small or large.' "

| 33 | |

34	I said, "What if one partner [in a property] requests the division [of the
35	property] when the partnership was the result of an inheritance or a purchase, and
36	the remainder [of the shareholders] rejected the division?" He said, "Mālik said,
37	'Whoever among them requests the division, and what is to be divided belongs to
38	him, it should be divided. [This is so] whether it is a slave, livestock or something
39	else.' Mālik said to me, 'That is also so whether it is a purchase or an inheritance;
40	it must be divided. However, regarding something which is not divisible and one
41	of them says, "I will not sell [my portion]," while the rest of them say, "We will
42	sell," ' he said, 'It should be sold for him and for all the others, regardless of
43	whether they want [to sell] or not. Those who do not want the sale still get to take
44	what they have been given for [their portion]. That will be what belongs to
45	them.' "

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406. The 1323/1905 Cairo edition reads here *tabārak wa-ta ʿālā.*

407. *Sūrat al-Nisaʾ* 7

6.3. Discussion of the Text

Although the content of the text is quite interesting, and raises many questions concerning social life and personal status law, it is the form itself that is being investigated here, in order to make some conclusions concerning the composition of the text and the implications arising from that composition. First, some observations are appropriate. The text is essentially written as dialogue with quoted speech.[408] Three individuals are relevant to the text: Saḥnūn—the implied and sometimes mentioned first-person narrator as disciple; Ibn al-Qāsim—the other person in the dialog referred to in the third-person and in the role of teacher; and Mālik—referring to Mālik b. Anas (lines 11, 17, 21, 22, 26, 36, 39). Also relevant to this portion of the *Mudawwana* is the text of the Qurʾān, here referred to as "Allāh's book" (line 28).

The text seems to naturally break up into three sections (lines 1-17, 18-32, 34-45), considering the back-and-forth, question-answer nature of the exchange. These natural divisions within the text are identified above with a line break between them. At the outset, Saḥnūn poses a scenario to his teacher concerning the division of a property which, when divided, is clearly not equal in value (1-6). As an aside, it would be useful to know that when a property is divided between individuals by law, it is often divided in unequal portions due to the fraction of the property which is accorded to each individual. So it is not necessary that a property be divided into equal portions, but rather that the property be divided in such a way that each individual receives the share to which he is entitled. This could be a half, or a quarter or an eighth or smaller, depending on the number of people amongst which it is divided and the relationship that each individual had to the deceased, in the case of inheritance.

408. Translation license is taken to indicate by punctuation direct speech and reported speech although punctuation of that nature does not occur in the original text.

Note that when Saḥnūn poses his initial question, he is asking Ibn al-Qāsim for his opinion concerning this conditional sale. Often the questions that are initially posed in the first person within the text of the *Mudawwana* are asking for the opinion of the teacher. The need for a question itself implies that there is a gap of knowledge concerning this situation. The very existence of the *Mudawwana*, noting especially its vast size, demonstrates the need for clear instruction or procedure in a multitude of situations in life. Following this initial question, the response provides a ruling regarding the permissibility of the scenario as outlined by the question. Included in the response is a reference to what seems to be some form of a recognized body of law that is already established: "...that which is permissible in sales (lines 8-9)..." and "...that which is invalidated in sales (9-10)." The implication is that by the time this was recorded or transmitted, a general concept existed of what was permissible or not in the category of sales.

Note that Ibn al-Qāsim then clearly states that what he has pronounced is his opinion (*ra'yī*) (10), yet he appears eager to point out that his opinion is not based solely on what he thinks is good, but rather on the basis of what Mālik has previously said (11-13). Additionally, it should be pointed out that Mālik's speech in this particular part does not appear to be direct speech as it is later in the passage, but rather reported speech.

In the next part, Saḥnūn asks two further questions related to the original topic but with a variation—now a charitable or non-charitable gift is given by the one who receives a greater than proportionate size of the property being divided in order, presumably, to equalize the shares appropriately (14-17). Saḥnūn also asks about the legality of purchasing simply a passageway through the house, without purchasing any part of the house proper, assuming an individual's need to pass through one property to get from his own property to a public access way (18-20). Both of these follow-on questions results in a very brief response from Ibn al-Qāsim indicating that these suggested scenarios are permissible, but again, and it should be emphasized, this is "according to Mālik (17, 20-21)." The majority of the dialogue in this part

of the text is dependent on the speech of Saḥnūn—the lengthy, detailed explanation of his question requiring a greater proportion of the exchange.

In the final part of the sample text, the student now asks a more investigative question concerning the sayings of the main master, Mālik, on the particular subject about whether or not something should be divided if, upon its division, it becomes unusable (23-26). The length of Ibn al-Qāsim's reply is similar to that in the first part, but the contents of his reply contain not just the saying of Mālik (26-27, 28-32), but also the basis for this quoted saying, which is given as a quote of Qurʾānic text (28-29). One more follow-on question is asked concerning this (34-36), and a longer explanation is given which is simply another quotation of direct speech from Mālik (37-45).

Before delving further into the questions concerning the use of authority in the text, the following is the same sample text, yet with the source of the information being designated by variations in font style in order to visually identify of whom the speech is representative. Italic text indicates Saḥnūn is the speaker; underlined text represents the speech of Ibn al-Qāsim; underlined italic is for narrative speech within Ibn al-Qāsim's speech; bold text is for Mālik's either direct or indirect speech; and bold italic represents text found within the Qurʾān.

> I said, "*What is your opinion* [*about the following*]*: Two men own a property* (dār) *that is divided between them. One of them takes a part and gives a part to the other on the condition that the one gives the other a slave or cash* (darāhim) *or a commodity of full measure*[409] *or a promise of payment. What would the situation be if the one who gives it, paying with a deferment of payment, does not specify a time frame?*"

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409. Implied in this is that the commodity is not silver or gold.

He said, "This is permissible when the time frame is specified, and when there is a prescribed financial obligation; it is only not right when that person is to pay it at an unspecified later date. What is permissible in this situation is what is permissible in sales, and what is invalidated in this situation is what is invalidated in sales." He said, "This is my opinion because *Mālik said* **there is nothing wrong (*lā bāʾs*) if one of them takes a part of the property and the other a part from the property on the condition that one of them provides additional money (*danānīr*) for the other**."

I said, "*It is similar if the property is divided among the two of them and one takes a part and the other a part on the condition that one of them donates an acceptable charitable gift on behalf of his co-owner or gives him an acceptable gift.*"

He said, "*Mālik said*, '**This is permissible**.' "

I said, "*What if a man buys a passageway in his house from someone without buying any other part of the house which has the potential to be the object of a bequest; is this permissible?*"

He said, "This is permissible according to Mālik. "

I said, "*What are the sayings of Mālik in the case of a small house* (bayt) *which is owned together by fellow tribesmen and the portion that belongs to one of them is too small to be of benefit if it is divided further. Can it be divided or not?*"

He said, "*Mālik said*, '**It is divisible even if there is a portion belonging to one of them which is of no benefit to him if it is divided amongst them. [This is] because Allāh, the exalted (*taʿālā*),**[410] **said in his book, "*Whether the portion be**

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410. The 1323/1905 Cairo edition reads here *tabārak wa-taʿālā*.

small or large—[it is] a legal share." **411** **Whether the portion of it is little or the portion of it is large, it is the same. It divides between them if they request the division and this requirement cannot be disregarded even if the [resulting] portion is small or large.' "**

I said, "*What if one partner* [*in a property*] *requests the division* [*of the property*] *when the partnership was the result of an inheritance or a purchase, and the remainder* [*of the shareholders*] *rejected the division?*"

He said, "*Mālik said,* '**Whoever among them requests the division, and what is to be divided belongs to him, it should be divided. [This is so] whether it is a slave, livestock or something else**.' *Mālik said to me,* '**That is also so whether it is a purchase or an inheritance; it must be divided. However, regarding something which is not divisible and one of them says, "I will not sell [my portion]," while the rest of them say, "We will sell,"** ' *he said,* '**It should be sold for him and for all the others, regardless of whether they want [to sell] or not. Those who do not want the sale still get to take what they have been given for [their portion]. That will be what belongs to them.**' "

It is interesting to observe the balance, or rather the imbalance, of the different speakers within the text, noting not only the amount of speech which is accorded to each source, but also the placement of the different speakers and how this might change the strength or authority of each response. First note that Saḥnūn's speech, which is merely the asking of the questions, consists of a considerable portion of the passage. The questions themselves are lengthy, they include many details, and sometimes allow for different variables within the same situation. Through the continual asking of questions, not merely in

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411. *Sūrat al-Nisaʾ* 7

the brief passage, but throughout his entire compendium, Saḥnūn demonstrates the unending ability to dream up potential scenarios for which a legal opinion is required. This is a significant point. The content of Ibn al-Qāsim's speech which is based on his own thought (underlined text), seems proportionately small in comparison with the whole text. It essentially occurs only once in the passage, following the initial question on this new topic, and is not broken up at all. His stated opinion is smaller in quantitative text than the original question.

When concluding his opinion in this first response, Ibn al-Qāsim immediately gives authority to his own opinion by supporting it with the transmitted saying of Mālik. So Ibn al-Qāsim's opinion is not merely based on his own thoughts and ideas, but rather it is founded on the sayings of a more authoritative source which came before him. This particular source, which Ibn al-Qāsim relies on, is not a direct quote of Mālik's but appears to be a paraphrase or transmission of Mālik's thought. So Ibn al-Qāsim's personal opinion is linked together with the more authoritative saying of Mālik.

Ibn al-Qāsim refers to the ideas and speech of Mālik in different ways. Sometimes he relates what Mālik has said through a paraphrase of his speech. At other times he quotes him directly. He also simply acknowledges that Mālik would have approved of the idea put forth. At one point, Ibn al-Qāsim quotes Mālik directly and indicates that he himself heard Mālik say what he is quoting. These different forms of reference to Mālik convey differing levels of authority. When Ibn al-Qāsim says, "Mālik said" or "Mālik said to me" there is a different strength of authority to which he is appealing, for the second one clearly implies that it was said directly from Mālik to Ibn al-Qāsim, whereas the other construction implies that the words were spoken by Mālik, but may have been transmitted by someone else to Ibn al-Qāsim. Unlike the *Muwaṭṭaʾ,* there are few *isnād*s to rely on in the *Mudawwana* relative to *ḥadīth* literature, the conversational style lending itself to an indirect *isnād*. An *isnād* could

now be reported by testimony of the *Mudawwana* sounding something like: "Saḥnūn said, according to Ibn al-Qāsim, who heard it from Mālik that . . ."

The speech of Mālik has some interesting qualities to it. It appears in several parts of the passage, and not in one isolated location. In this section it begins relatively small. In the middle of the passage it is short and stands alone—on its own authority. In one section, a verse which is part of the Qurʾānic text, is added in the midst of Mālik's saying, with a notation that the text quoted is the speech of Allāh. This appears as an attempt to further strengthen the force of the response by appealing to a recognized ultimate authority. By the end of the passage, however, Mālik himself, even though not present in the recorded conversation, has become the dominant voice.

The passage being examined demonstrates a clear process involved in trying to arrive at answers to questions asked. The first source appears to be Mālik—on any given subject. This is supported by *ḥadīth* or even Qurʾānic text when there is one related. But in the absence of these resources, the teacher uses his own judgment/opinion. Yet this must have a basis in something previously said or taught—again by Mālik. The outcome, though, is a new situation, a new statement. In all of this opinion which is being given on the subject of divisions, the simple dicta *lā ḍarara wa lā dirāra* is the main foundation of the teaching.

6.4. Commentaries on the Text

The commentaries themselves yield interesting observations concerning how the text is treated and how the commentaries themselves are written. Al-Barādhiʿī (d. 438/1046-47) seems to be silent on the specific matter of how to deal with a division which will create a piece of property that is too small for someone to benefit from it. However, in reading through al-Barādhiʿī's commentary, his layout of text and methodology in dealing with specific subjects has much in common with the text of the *Mudawwana*. Ignoring the subject headings, as these could easily have been added by later redactors, al-Barādhiʿī often begins a matter using a hypothetical situation, similar to that in the *Mudawwana*. He does not use

questions and answers, but simply presents the scenario, then providing the instruction for how this situation should be resolved. For example, one section begins with a description of a property (*dār*) owned by three men, and Barādhiʿī continues to describe the situation.[412] Barādhiʿī also begins many ideas with the name of the person who spoke something, e.g. *qāla* Ibn al-Qāsim[413] or *qāla* Mālik.[414] Within the section of his commentary concerning *Kitāb al-Qisma* there are no apparent references to writings or *kitāb*s or even the word used in other commentaries to refer to legal doctrine of someone, *madhhab*. Being one of the earlier commentators on the *Mudawwana*, these observations support the conclusion that the *Mudawwana* was still in its formative stages in terms of being viewed as a book (*kitāb*) in itself, at the time of al-Barādhiʿī's writing. However, caution should be taken in making an argument out of silence in order to support the idea that the *Mudawwana* did not exist as a book at the time of al-Barādhiʿī. Given al-Barādhiʿī's hometown being Kairouan, and his death some 35 years after that of al-Qābisī, he was most assuredly aware of the latter's work concerning the transmission of the *Mudawwana*. One wonders if al-Barādhiʿī's temporal proximity to al-Qābisī, knowing the influence that al-Qābisī may have had on the text, does not allow for him to recognize the *Mudawwana* in the same way as later commentators.

The commentary of Ibn Rushd (d. 520/1126) is presented very differently from al-Barādhiʿī's work demonstrating significant development not only in dealing with textual matters, but also in terms of the synthesis of jurisprudence as a discipline. Upon reading his work it is understandable why Ibn Rushd gained the reputation as the most prominent Mālikī jurist in the Muslim West during his lifetime.[415] His section on *Kitāb al-Qisma* begins by expressly stating the source material for his commentary, namely the Qurʾānic verses and any

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412. See al-Barādhiʿī, *al-Tahdhīb*, 4:176.

413. See al-Barādhiʿī, *al-Tahdhīb*, 4:181.

414. See al-Barādhiʿī, *al-Tahdhīb*, 4:194.

415. See Latham, "Ibn Rushd."

ḥadīth related to the subject matter. Then it is neatly divided up into sections, each division identifying a new subject area with the word section or division (*faṣl*). When quoting something from the *Mudawwana*, specifically the phrase "a sale of sales" (*bayʿ min buyūʿ*), he refers to the "text of Mālik" (*naṣṣ* Mālik),[416] implying that this is something that is clearly written down, and recognized, without title, that it is from Mālik. In another section of his commentary of this *kitāb*, he brings up an issue, the resolution of which is not agreed upon by previous scholars. A reference is made to the "*qawl* Ibn Mājishūn" and his son, ʿAbd al-ʿAzīz, and the "different readings of this in the hearing (*samāʿ*) of Yaḥya from the *kitāb* of divisions."[417] These observations may indicate, from the time of al-Barādhiʿī to the time of Ibn Rushd, a period of just less than a century, a possible development in the text of the *Mudawwana* which allows jurists to now refer to something that is written, rather than simply the "sayings" of the teacher. Is it possible that in this short period of time the concept of a "text" has come to be placed in the minds of the jurists?

One final commentator of those investigated in this research is al-Rajrājī (d. 633/1235). Coming almost a full 200 years after al-Barādhiʿī, it is interesting to see even further developments in his references to "*al-Mudawwana*," by name. His use of the word *madhhab* seems to indicate from context those who follow a teacher in general. In at least five different places, he makes mention of "the *madhhab*,"[418] he speaks specifically about "the *madhhab* of Ibn al-Qāsim"[419] and "the *madhhab* of Ashhab."[420] This appears to be a general usage of this word. Concerning the concept of a book, he speaks of "*al-kitāb*" three times, with one of these references being to the "sayings (*qawl*) of Mālik in the *kitāb*."[421]

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416. See Ibn Rushd, *al-Muqaddimāt al-mumahhidāt*, 3:93.

417. See Ibn Rushd, *al-Muqaddimāt al-mumahhidāt*, 3:109.

418. al-Rajrājī, *Manāhij al-taḥṣīl*, 9:171, 172 (x2), 181 and 192.

419. al-Rajrājī, *Manāhij al-taḥṣīl*, 9:171.

420. al-Rajrājī, *Manāhij al-taḥṣīl*, 9:172.

421. al-Rajrājī, *Manāhij al-taḥṣīl*, 9:181 and 192.

"The *Mudawwana*" itself is mentioned three times.[422] Providing evidence that the *kitāb*s of the *Mudawwana* are in fact seen as separate entities, yet within an organized whole, he mentions two individual *kitāb*s within the *Mudawwana*: *Kitāb al-Ruḥūn* (*sic*),[423] and *Kitāb al-Qisma* itself.[424] By this time, the commentators, within their own texts, provide clear evidence for the referencing of juristic concepts from a text compendium, with separate *kitāb*s within it, as a source text for jurisprudence. A table of contents, or a listing of the *kitāb*s of the *Mudawwana* as dealt with in their commentaries may provide support as well. However, the mentioning of these titles, from within the text of the commentary itself is much stronger evidence for the view that the commentators took of the *kitāb* of the *Mudawwana* itself, as well as the relationship between the *kitāb*s found within it. Here the concept now is expressed of a complete whole with a relationship existing between the parts. This brings to mind the adage that the whole is greater than the sum of the parts.[425]

The Qurʾānic reference to *Surat al-Nisāʾ* 7 is explained by Ibn al-ʿArabī (Abū Bakr Muḥammad b. ʿAbd Allāh, d. 543/1148), in three parts: first the *sabāb al-nuzūl*, second a section dealing with the outcomes expected as a result of the *āya*, and third a discussion of the differences which exist within the Mālikī *madhhab* concerning the division of property. It is this third point which is most relevant to this discussion. In his commentary Ibn al-ʿArabī indicates that both Mālik and Ibn Kanāna were of the same opinion, that in the case of the division of property where the division would nullify the benefit of the part, the parts should not be divided, but rather lots should be cast for them in order not to harm the property. Ibn al-ʿArabī goes on to say that Ibn al-Qāsim, on the other hand, believed that Allāh removed

422. al-Rajrājī, *Manāhij al-taḥṣīl*, 9:177 and 181.

423. al-Rajrājī, *Manāhij al-taḥṣīl*, 9:181.

424. al-Rajrājī, *Manāhij al-taḥṣīl*, 9:192.

425. This phrase is often attributed to Aristotle, although it is the kernel of the idea which may be found in his whole-part causation theory, in *Metaphysics*. See Aristotle, Metaphysics (Santa Fe: Green Lion Press, 1999). Euclid is credited with saying, "Καὶ τὸ ὅλον τοῦ μέρους μεῖζόν" meaning the whole is greater than the part. See Euclid, *Elements* (n.p.: Richard Fitzpatrick, 2007), 7.

the harm with his glorious words, which was also confirmed by the words of the *ḥadīth, lā darara wa lā dirāra*. What is implied is that in a sense the words of the Qurʾān and the *ḥadīth* here appear to become like a magic spell that removes the harm, according to how Ibn al-ʿArabī interprets Ibn al-Qāsim. Ibn al-ʿArabī goes on to criticize the use of this *āya* concerning divisions, for, in his opinion, the context of the *āya* is about inheritances, and not about divisions. He concludes by saying that the division lapses concerning that which voids the benefit and decreases the value of the property.

Regarding the sayings of Mālik, al-Qurṭubī (Muḥammad b. Aḥmad, d. 671/1272), states that Mālik instructs that if something is divisible, it should be divided, even if the division results in a part that is not of benefit (*mā yantafiʿu bihi*), seeming to directly quote the passage of the *Mudawwana* (below). Concering Abū Ḥanīfa, al-Qurṭubī relates that Ibn Abī Laylā advises differently saying that if the division creates something that is of no benefit, then it should not be divided. Further he said that all divisions create some form of harm for one of those involved. It is interesting to note that al-Qurṭubī's commentary credits Ibn al-Qāsim, quoting his opinion but not word for word as related in *Kitāb al-Qisma al-thānī*. Al-Qurṭubī actually provides a different reading than that found in the *Mudawwana,* giving clarity to the text. The content of Ibn al-ʿArabī is essentially found in al-Qurṭubī, with al-Qurṭubī giving fuller details on the situation.[426]

Throughout this passage, it has been observed that several levels of authority are demonstrated. Authority is sought based on:

- the opinion of Ibn al-Qāsim linked to the teachings of Mālik

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426. That al-Qurṭubī provides a different reading for Ibn al-Qāsim's opinion to what is found in the *Mudawwana* causes one to wonder about the influence that the commentators and commentaries had on the text and reception of the *Mudawwana*. Wansbrough, in his *Quranic Studies* discusses briefly the issue of "the process by means of which revelation became scripture." It is possible that the commentaries could have been the bridge or a stepping stone for the *Mudawwana* becoming a received legal text within the community of the ʿulamāʾ. See John Wansbrough and Andrew Rippin, *Quranic Studies: Sources and Methods of Scriptural Interpretation* (Amherst: Prometheus Books, 2004).

- the reported speech of Mālik

- the direct speech of Mālik possibly via an unknown transmitter

- the direct speech of Mālik to Ibn al-Qāsim

- the direct speech of Mālik which is then linked to a verse from the Qurʾān noted as being the direct speech of Allāh

Following these observations, along with the notations above concerning the different speakers, the following are reasonable conclusions which can be drawn from this analysis. First, concerning the permissibility of different aspects of divisions, and assumedly many other subjects within the legal sphere, judgments were seen as needing to be made by those who had the authority to do so. Sufficient knowledge of previous judgments, along with the ability to be able to apply those judgments in new situations as they come up, are at least two qualifications necessary to enable one to act in this role. Also, a properly qualified individual, although in some circumstances may have had sufficient authority in order to pronounce judgments on his own authority, could appeal to a higher authority in order to establish a stronger, and in some cases, an incontestable case. These types of cases included Mālik, whose authority was sometimes linked to the authority of Allāh, and Ibn al-Qāsim, whose own opinions were closely linked to the teachings of Mālik. Finally, the law was capable of rendering judgments which were applicable to situations in which people found themselves in the course of their daily lives—it had practical application, but it also had the ability to deal with highly unusual and even hypothetical situations, rendering the law as able to deal with any and all scenarios. However, along with that, the law needed to be handled by those qualified to do so.

In Saḥnūn's time, sufficient gaps existed in the people's understanding of the "correct" way, according to their perceived religious understanding, to carry out specific actions and practices in many aspects of human life regarding both interpersonal relationships

as well as the relationship of the individual with Allāh. The *Mudawwana,* fills this knowledge gap, giving the people pragmatic answers to questions they may ask concerning the appropriate way for them to carry out their life. Additionally, though, the *Mudawwana,* through the use of authority, demonstrates the ability of the sufficiently trained legal jurisprudent to handle any and all questions he may encounter. It silently asserts the ability of the religious field to more than adequately deal with all aspects of human life. The *Mudawwana* is an exemplification of legal discourse, within a historical context, to address needs, whether perceived or proclaimed, with full capability.

6.5. Application of Günther's Terminology

In the introduction to this project, Günther's terminology to classify historical sources in Arabic compilations was presented.[427] At this point, using the text presented above in translation, an assessment of the *Mudawwana* will be made according to Günther's terminology in order to attempt to classify the different roles played by the individuals mentioned in the text.

Günther's terminology is comprehensive and allows classifications to be made of a myriad of individuals that may have a role in the creation of a complex text over the course of possibly centuries. Although the *Mudawwana* is a lengthy text and likely has a lengthy compilation history, its creation is not as complex in terms of individuals as the full range of terms presented by Günther. As there are only three main personalities as presented in the text above, classification of personalities from the text itself will be limited to these three.[428] These three personalities are seen to take on multiple roles as defined by Günther's

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427. See above page 13 and chapter 4 for the explanation of Günther's terms beginning on page 82.

428. Although there are many other personalities mentioned in the larger text of the *Mudawwana,* these three remain the principal personalities throughout the entire text.

terminology. His observation that his terms proposed are not mutually exclusive is very apropos in this circumstance.[429]

The three personalities, as understood in the above text but named in other places, are Saḥnūn, Ibn al-Qāsim and Mālik. Each fulfills multiple roles when classifying them with the terms of transmitter, guarantor, teacher, informant, authority, writer, author, editor and collector.

6.5.1. Transmitter

In terms of transmitter, both Saḥnūn and Ibn al-Qāsim qualify for this title. They each pass teaching on from someone before them to someone after them. For example in the passage above on lines 6 to 10 Saḥnūn, through the text of this *kitāb*, is transmitting the teaching of Ibn Al-Qāsim. So, Saḥnūn is a direct transmitter of Ibn al-Qāsim as he is seen receiving teaching directly from Ibn al-Qāsim. The very next section, from lines 10 to 13, Ibn al-Qāsim is relating teaching from Mālik to Saḥnūn. As Saḥnūn did not receive this directly from Mālik himself, he passes it on indirectly from Mālik. He is recorded historically as never having met Mālik face-to-face,[430] Saḥnūn is an indirect transmitter of Mālik. However Ibn al-Qāsim is seen as a direct transmitter of Mālik, in this instance. At some points the direct transmission reads as indirect speech, and at other points as direct speech. This detail does not affect whether or not it is considered direct or indirect transmission. Although Saḥnūn, and Ibn al-Qāsim for that matter, was a transmitter of other individuals as evidenced by the text of the *Mudawwana*, as they are not directly mentioned in the brief passage translated above, they will not be classified.

6.5.2. Guarantor

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429. See Günther, "Assessing the Sources," 92.

430. For more on this, see above on page 10 note 16.

Ibn al-Qāsim and Mālik are both guarantors of Saḥnūn. Ibn al-Qāsim can be classified as a direct guarantor and Mālik can be classified as an older, earliest, main, original guarantor of Saḥnūn. Although it may appear that Mālik should also be listed as a "direct" guarantor of Saḥnūn, for according to Günther's definitions, a direct guarantor is a "senior person, whose material the compiler used directly (indicated *inter alia*, by direction quotations) without having been in personal contact with this senior person."[431] However, throughout the text of the *Mudawwana*, whenever Mālik is quoted, the quotation is spoken as if through the personality of Ibn al-Qāsim. A clear example of this is in lines 26 to 32 where Ibn al-Qāsim quotes directly from the speech of Mālik. Here Saḥnūn, through the text of the *Mudawwana*, is quoting Mālik directly, and in that way Saḥnūn can be classified as a direct guarantor of Mālik. Yet Ibn al-Qāsim is seen as always being the intermediary between Saḥnūn and Mālik. As such, there is relunctance to follow this strict definition of Günther in this instance by classifying Mālik as a direct guarantor of Saḥnūn. Through this conversational style, contact between Saḥnūn and Mālik is avoided in a sense, and a transmitter is required for Saḥnūn to "hear" Mālik. This protocol implies that there is no direct written source to which Saḥnūn would have been able to appeal, being required to get his teaching on Mālik through Ibn al-Qāsim and Ibn al-Qāsim's interpretation on that teaching being necessary. It may of course have been the case that Ibn al-Qāsim had notebooks of Mālik's sayings to which Saḥnūn had access. These notebooks could have been Ibn al-Qāsim's quotations of the speech of Mālik as found within the *Mudawwana*. Understanding what we do about teaching styles prevalent during this formative period of Arabic texts,[432] the conclusion which could be drawn here is that the narrative implies a necessary lengthy, intensive teaching time for Saḥnūn from Ibn al-

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431. See Günther, "Assessing the Sources," 85.

432. See earlier in Günther's article for conclusions he draws from the literature available. Specifically relevant here is the conclusion that sessions were held by scholars for the purposes of teaching that took place in communal locations such as mosques, or even in homes of the teacher. See Günther, "Assessing the Sources," 77.

Qāsim. This would speak to the training which is implied is necessary in order for one to be fully qualified to be able to sufficiently judge on matters not specifically outlined previously.

Throughout the larger text of the *Mudawwana* where Ibn al-Qāsim presents his own opinions, he takes on the role of first or main guarantor in the place of Mālik. This allows for a shift in the teaching. In some instances through the balance of the larger text, Saḥnūn himself also takes on the role of first guarantor, main guarantor and informant. It occurs specifically in those instances where Saḥnūn's name is invoked such as in *qāla* Saḥnūn.[433] The personalities as demonstrated here move rather fluidly through these different roles. This is due to the need for the student to learn from the teacher, and then to take on the role of teacher/compiler, in a new location, becoming the area expert. Becoming a teacher was an important shift not just for Saḥnūn, but it allowed for the teaching of the Mālikī tradition to be passed from Egypt further west into the Maghrib region. This shift allowed for Saḥnūn to take on a much greater role in the dissemination of the traditions of Mālikī thought. Although this brought Mālikī teaching to the region of Kairouan, and assisted in establishing Kairouan as a main teaching area, it is not the evidence needed to demonstrate the establishment of the Mālikī tradition as the dominant tradition in the region. It is believed that this took place during the time between Saḥnūn and Ibn Abī Zayd as well as al-Qābisī.

6.5.3. Informant and Teacher

As Ibn al-Qāsim was a direct guarantor of Saḥnūn, having had personal contact with him. He is also classified as an informant. The passage, through its narrative, provides ample evidence of Ibn al-Qāsim teaching Saḥnūn. The style of the text, *masāʾil*, may lead one to question whether or not these narratives took place as recorded. For the purposes of defining the relationship between Saḥnūn and Ibn al-Qāsim, other historical sources provide enough

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433. See above page 155 for a specific reference in the text to this phrase. This phrase is encountered too many times to list them all here. In the first volume of the 1323/1905 Cairo edition alone it occurs 51 times, dispersed rather evenly between pages 100 and 400. The first and last hundred pages of this volume have few occurrences of the phrase.

evidence to indicate Saḥnūn's *riḥla* east for the purposes of studying under Ibn al-Qāsim.[434]

Saḥnūn learned directly under Ibn al-Qāsim during his *riḥla* to Egypt, attending his lectures. Ibn al-Qāsim is also technically classified as Saḥnūn's teacher.

6.5.4. Authority

The word authority, as it is used here, refers to "any scholar to whom material incorporated in a given compilation is explicitly ascribed."[435] Günther's definition restricts the application of this definition to individuals, however, in the translated section of the text, an appeal is made to a higher authority which does not fit this category as defined. The *kitāb* of Allāḥ, to which Ibn al-Qāsim quotes Mālik as making reference, does not fit the category of scholar, however it plays the same role as a scholar to whose work reference is made. The three main personalities, Saḥnūn, Ibn al-Qāsim and Mālik, all technically fit this definition, as all three are ascribed with material in this text. The role of Saḥnūn in this portion of the text is clearly of one asking questions, for information and clarification, yet this material is still ascribed to him. It may be that Günther's original intent was not for those asking questions, but rather those making statements to which the role of authority should be ascribed. Here Günther's qualification is important for he also states that the category of authority reflects two dimensions, the second of which is the significance of the materials ascribed to this scholar. He describes an "internal" dimension to the relationship between the scholar and the text in order to establish authority, and this is clearly the case concerning both Mālik and Ibn al-Qāsim in the text in question. For example, in the translated text as found on page 191, in lines 6-10 of the text, Ibn al-Qāsim is giving his opinion. He states that outright in line 10. This establishes a clear "internal" dimension that Ibn al-Qāsim has with the text. He is not simply transmitting information from an authority, being an authority in that process, but he also is providing content, textual content itself, putting himself in a higher role of authority

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434. See above on page 55 for the discussion on Saḥnūn's *riḥla* from the primary sources.

435. See Günther, "Assessing the Sources," 86.

other than simply passing on information as an informant. Similarly, when Ibn al-Qāsim quotes from Mālik in lines 11-13, 17, 25-30 and 34-42, he is demonstrating a close internal relationship between Mālik and the text given. The shift in speech from indirect to direct speech, as recognized previously and mentioned above on page 198, strengthens the sense of authority given in the passage. And further, in that vein, the referencing of the *kitāb* of Allāh is clearly another intensification of authority through the text. Günther's classification of authority here includes every individual referenced in this section, Saḥnūn, Ibn al-Qāsim and Mālik, as well as the *kitāb* of Allāh, even though not a "scholar."

6.5.5. Writer, Author and Editor

The nuances which exist between these three terms as defined by Günther are quite clear in theory. However, in the classification of these categories concerning the *Mudawwana*, the differences are too subtle in order to segregate them into separate categories. So they have been gathered together in order to discuss them collectively.

The following are reminders of the definitions as provided by Günther above in section 4.[436] Günther defines a writer as: "any scholar to whom a conclusively edited written work is attributed can be termed a 'writer.'"[437] Günther states an author is "a 'writer' whose written work is provably the result of *creative* scholarly efforts" (emphasis Günther).[438] Editor, the last of these trio of terms is further clarified by Günther as a "recensionist." He defines this individual as a "writer" who it has been proven has "relied, in all or in most cases, on one and the same scholar (or 'direct guarantor')—while the latter can be identified in the bio-bibliographical literature as the 'author' of a book dedicated to the topic relevant in this context."[439]

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436. See above section 4 beginning on page 82.

437. Günther, "Assessing the Sources," 88.

438. Günther, "Assessing the Sources," 88.

439. Günther, "Assessing the Sources," 88.

To simplify the understanding of editor by application to the current research, Saḥnūn, if seen as a writer, could be classified as an editor—of the *Mudawwana*—if he is proven to have relied, in all or in most cases, on Ibn al-Qāsim as his direct guarantor, if Ibn al-Qāsim, is recognized in the bio-biographical literature[440] as the author of a book dedicated to the topic relevant here. As the classification of Saḥnūn as an "editor" of the *Mudawwana* is dependent on whether or not Ibn al-Qāsim is seen as an/the author of the *Mudawwana,* it is necessary to clarify his role in that regard. Referring to our definition of author above, it must be asked whether or not Ibn al-Qāsim can be said to have made "creative scholarly efforts" concerning the *Mudawwana.* As seen above, in section 6.5.2 on page 206 Ibn al-Qāsim is clearly the teacher, informant and direct guarantor of Saḥnūn. The recensions of the *Mudawwana,* as they have been examined in this research, are recognized by medieval transmitters to have been recensions *ʿan* Saḥnūn, *ʿan* Ibn al-Qāsim, *ʿan* Mālik. Saḥnūn, according to these transmitters, is the final link in the chain who receives the "material" which is incorporated into the *Mudawwana.* All three of these personalities are credited through this recension list as having a role in the creation of the *Mudawwana.* Yet the lion's share of the creative work of the *Mudawwana* appears to rest with Saḥnūn. Although Ibn al-Qāsim makes creative statements in the *Mudawwana,* it is through the inquiries of "Saḥnūn" that these creative statements are made in the text. Ibn al-Qāsim is indeed the author of something, but to say that Ibn al-Qāsim himself is the author of the *Mudawwana* would be crediting him with more than is reasonable. Were his comments to Saḥnūn seen to have come from notebooks of his own, which Saḥnūn copied or recorded in some way, it would be correct to say that Ibn al-Qāsim is the author of those notebooks, but not of the *Mudawwana.* As the *Mudawwana* is created with much more than just the statements "authored" by Ibn al-Qāsim, in this respect. Thus the creativity found in the *Mudawwana* is attributable to Saḥnūn to a greater degree

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440. Here it is assumed that Günther is referring to the *ṭabaqāt* literature or what many refer to as the biographical dictionaries of the classical period, e.g. al-Qāḍī ʿIyāḍ's *Tartīb al-mudārik* or al-Mālikī's *Riyāḍ al-nufūs.*

rather than Ibn al-Qāsim. In considering his role in the *Mudawwana*, Ibn al-Qāsim should be limited to the roles of teacher, direct, main guarantor of Saḥnūn and even one of the sources of the *Mudawwana*. As Ibn al-Qāsim should not be classified as the "author" of the *Mudawwana*, it then becomes unreasonable, by the definitions provided by Günther, for Saḥnūn to be considered as the editor of the *Mudawwana*, for the latter classification is dependent on the former.

Concerning the role of writer, it is not disputed that the work of the *Mudawwana*, by all who are familiar with it, is attributed in one form or another to Saḥnūn. So the attribution aspect of Günther's definition is not a hurdle. The difficulty in the classification of Saḥnūn as a writer with this definition is in the "conclusively edited written work." The word "conclusively" here, in Günther's definition, seems to be somewhat ambiguous. Does Günther mean that the work is clearly edited—that clear editing effort has been done on the work? That is what is understood here.[441] The *Mudawwana* is clearly both written and edited. The significant point, for classification purposes here, rests with the question of whether or not the weight of this definition rests more on the fundamental of "edited" or on "written." The mass of evidence to support the work of Saḥnūn in editing the text is too heavy to shift the chief burden of it to some other writer: the biographical dictionaries which include details of Saḥnūn's trip east, his studying with Ibn al-Qāsim, his inquiries concerning the *Asadiyya*,[442] fragments of the *Mudawwana* which date as early as the late 3rd/9th century, commentaries on the *Mudawwana* which attribute the work to Saḥnūn, copies of manuscripts not only in North Africa but also into Andalusia, and even into West Africa[443] which attribute

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441. It could be argued that Günther's intended meaning here of conclusively edited written work is that the work must have been written down in some form, edited to some extent, and completed to some degree into a form that is recognizable as a complete work. If that is the case, it is not clear given Günther's definition. This, though, is not the sense in which Günther's definition is used.

442. See below note 448 on page 216 concerning the title of Ibn al-Furāt's works.

443. *The Kano Chronicle*, a work that records the history of parts of northern Nigeria from the 4th/11th century until the time of the Fulani in the 13th/19th century, documents the arrival of Islam iln the 9th/15th century by Mohamma Rimfa, the son of Yakubu. He built a mosque and minaret on the site of their sacred tree, establishing Islam as the local religion. In the period just before this, during the reign of Yakubu b. ʿAbdullahi, Shehu Abdu

the work to Saḥnūn. Each piece of evidence, in and of itself, is not sufficient to provide proof of Saḥnūn's involvement in the creation of the *Mudawwana* but taken together as a whole it is a large collection of evidence in favour of Saḥnūn's significant involvement in the creation of the *Mudawwana*. Admittedly, much of this later "evidence" could easily be attributed to a traditional understanding of the role of Saḥnūn. But even early fragments attest to Saḥnūn having been responsible for something in the creation of the *Mudawwana*. However, there is little definitive proof that it was Saḥnūn himself who wrote text onto parchment. It may seem most logical and reasonable that he did. Yet the burden of proof would not pass a "beyond a shadow of a doubt"—not that this is a trial of any sort. Yet, that Saḥnūn is the "writer" of the *Mudawwana* might not, for some, move from the realm of speculation into the realm of fact.[444] Here, of course, also, must be a clear understanding of what is meant by the name *Mudawwana*.

The *Mudawwana*, as a text, was formed over a period of centuries. From the evidence presented, this much is clear. The form that it took in the time of Saḥnūn is different than the form it was found in during the time of al-Qābisī. By the time of al-Qābisī the *Mudawwana* was understood to be a compendium of *kitāb*s, the material of which had come down through the jurists as the writings of Saḥnūn based on source material gathered from Ibn al-Qāsim, Mālik and others.

When using the definition given by Günther, and it can be agreed that one can be the "writer" without having to actually put reed to parchment in recording the text, then it would be hard to dispute that Saḥnūn is not the "writer" of the *Mudawwana*. For although it cannot

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Salam brought the "*Mudawwana* along with the *Jam ʿas-saghir* and the *Samarkandi*." See H.R. Palmer, "The Kano Chronicle," *The Journal of the Royal Anthropological Institute of Great Britain and Ireland* 38 (Jan-Jun 1908), 77, 79.

444. Tanselle has made an interesting statement in saying that the distinction between these two, fact and speculation, is not self-evident. He goes on to say that "historical inquiry has no choice but to treat speculation as fact, because facts are speculations that informed observers agree to accept until they are persuaded by a contrary argument." See Tanselle, "Textual Instability and Editorial Idealism," 10n15.

be proven that Saḥnūn himself actually wrote the words down, it could hardly be argued that he did not create these words and teach them to his students. The evidence does seem to support that Saḥnūn himself created something, either orally or possibly in writing, which later became written text, and still later came to be known as the *Mudawwana*. The evidence also seems to support that Saḥnūn was responsible for the composition of the *Mudawwana* in its form before it became a written text. If being a "writer" does not require one to physically "write" the text, and if the greater task in writing considered here is in editing, which is accepted, then it should be agreed, and here Tanselle's definition of "fact" is quite useful, that until it can be proven otherwise, Saḥnūn "wrote" the *Mudawwana*.

Concerning authorship, Günther states an author is "a 'writer' whose written work is provably the result of *creative* scholarly efforts" (emphasis Günther).[445] With this additional definition, the distinction in definition between the terms author and writer is that a writer must been seen to actually edit, by writing, something, whereas an author must be seen to "create" something. Note that the difference between the editor and the writer, according to Günther, appears to be in the number of sources (direct guarantors) upon which the individual relies.

Classifying the role of Saḥnūn with these neat, tight boxed, definitions is not cut and dried. From the evidence presented, Saḥnūn seems to have been responsible for the greater part of the creation of the separate *kitāb*s, which have been examined in this research. For example *Kitāb al-Wuḍūʾ*, *Kitāb al-Nikāḥ* and *Kitāb al-Qisma*, to name just three of the many, are all *kitāb*s, the content of which was created by Saḥnūn, generally in the form that they have reached us today through the modern editions of *al-Mudawwana al-kubrā*. However, that Saḥnūn himself was responsible for a compendium of these *kitāb*s, which in the classical period came to be known as the *Mudawwana* and then in the modern period came to be

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445. Günther, "Assessing the Sources," 88.

known as *al-Mudawwana al-kubrā*, is highly doubtful. In "creating" these building blocks (*kitāb*s) which later were brought together to make what became the *Mudawwana*, Saḥnūn used material from a few sources. There can be no doubt that with the evidence presented by Muranyi concerning the *Asadiyya*, that this was indeed some form of impetus for Saḥnūn in his effort to present juristic substance. That, together with the teachings of Mālik, the interpretations of Ibn al-Qāsim, Ibn al-Qāsim's additional opinions on a multitude of matters, as well as Saḥnūn's own opinions given a lacuna of judgments, were the basic building blocks which Saḥnūn used in order to create his *kitāb*s.[446] Did Saḥnūn himself write these *kitāb*s on some form of record, as in parchment, in order to preserve them physically in the form in which he created them? This is unclear. That his students wrote them down is definite, supported by the unpublished evidence noted by Muranyi and Brockopp of a fragment from the end of the third/ninth century. Yet the form of these writings from what they were to what they became is a process that is as yet not fully understood. As more evidence becomes available, it may be possible, hopefully, to better determine the form that Saḥnūn's writings took in the period between his own life and that of the time of al-Qābisī, both milestones in the formation of the *Mudawwana*.

The nature of the *Mudawwana* has been understood in different ways at different times. It is not at all provable that the title of the work, *al-Mudawwana*, came from Saḥnūn himself.[447] The nature of the *Mudawwana* during the time of Saḥnūn can only be understood by the most reasonable conclusions that can be drawn from the evidence available. The evidence presented throughout this work leads to the conclusion that no sense of a *Mudawwana* was in the mind of Saḥnūn at the time of his "writing" of the *kitāb*s which later

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446. As listed above on page 90, Muranyi would add to this list of "building blocks" for the *Mudawwana* the *Muwaṭṭaʾ* and *Jāmiʿ* of ʿAbd Allāh b. Wahb, the *Mukhtaṣar al-kabīr* of ʿAbd Allāh b. ʿAbd al-Ḥakam along with the writings of Ashhab b. ʿAbd al-ʿAzīz. See Muranyi, *Materialen*, 1.

447. Even Muranyi agrees with this. See Muranyi, *Beiträge*, 35.

came collectively to be known as the *Mudawwana*.[448] It is possible that Saḥnūn, in his role as *qāḍī al-quḍāt*, felt it necessary to establish as much as he could as a theoretical basis for legal judgments that he felt were in line with the teachings of Mālik. This may have been his motivation for creating these *kitāb*s which came to be known as the *Mudawwana*. But it is likely this will never be known.

Due to a shifting understanding throughout time of the idea of *al-Mudawwana*, different time periods will ascribe different personalities as being responsible for these various roles in relation to the *Mudawwana*. If the definition of the *Mudawwana* is to be the collection in classical times of *kurrāsa*s of *kitāb*s known as *"min al-Mudawwana"* then it would appear that the role of editor of the *Mudawwana* should really be attributed to al-Qābisī. Likewise the modern editions of *al-Mudawwana al-kubrā* each have their own editors, all responsible for having relied on Saḥnūn as their "direct guarantor", through the manuscripts that have come down to them through the hands of various transmitters. So the modern editions of the *Mudawwana* which are present today have experienced the editing work of a minimum of two different editors.

Concerning the other two roles, those of author and writer, the evidence presented seems to naturally lead to the following conclusions:

• Both Mālik and Ibn al-Qāsim "authored" material to which they are ascribed in the *Mudawwana*.

• Saḥnūn collected this authored material of Mālik and Ibn al-Qāsim while on his *riḥla* east, studying with Ibn al-Qāsim.

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448. There is likewise no evidence, to my knowledge, to support the idea that a "book" of the *Asadiyya* existed at the time of Saḥnūn. The only known evidence to date concerning the *Asadiyya* from any time close to that of Saḥnūn does not refers to Ibn al-Furāt's writings as the *Asadiyya*. There is, though, a refrence to the *kutub* of Asad b. al-Furāt. Muranyi cites an early 4th/10th century reference by Andalusian Ibn al-Faraḍī. See Muranyi, *Die Rechtsbücher*, 9.

- Saḥnūn creatively put this authored material of Mālik and Ibn al-Qāsim into the form of *kitāb*s, or sections of material related to the same subject.

- Saḥnūn taught this material to his students in the form of questions and answers in a conversational style between himself, the inquirer, and Ibn al-Qāsim, the teacher.

Mālik and Ibn al-Qāsim can both be considered as sources of the *Mudawwana*, but neither of them, based on the criteria of creativity, should be credited with being the author of the *Mudawwana*. If the *Mudawwana* is understood to be the collection of *kitāb*s during the classical/medieval period, Saḥnūn cannot be rightly seen as the editor of the *Mudawwana*, due to the fact that Ibn al-Qāsim is not seen as the author of the work. Saḥnūn should rightly be classified as the author (Günther's *Verfasser*) of the *Mudawwana* given his creative role. However, given the strict definitions of Günther's terminology, it cannot be supported that Saḥnūn be classified as the writer of the *Mudawwna*. This will all seem very confusing to those with a shallow reading/understanding of the *Mudawwana*. In order to try to rectify this potential confusion, and not to exacerbate it, I would propose an additional term be added, allowing for Saḥnūn to be distanced from the somewhat ambiguous terms, in this context, of author and writer. This new term I would propose is "creator". Although the idea of a *Mudawwana* was likely not in the mind of Saḥnūn at the time of his creation work, he was, and it is believable that he realized it, in the business of compiling (*yadawwina*). In this sense, even though the title of *Mudawwana* may not have been in his mind, it is reasonable to conclude that Saḥnūn realized that he was creating *a mudawwana* (compilation) of works of Mālikī *fiqh*, simply not *the Mudawwana*.

Chapter 7
Conclusions

When Saḥnūn set out on his journey eastward, he could not have realized the product that would result from his *riḥla*. The effects of his voyage and schooling under Ibn al-Qāsim still impact the world of knowledge in Mālikī studies; the "book" that was begun through the journey, learning and teaching of Saḥnūn is still evolving today. In an age of computers, internet and wiki pages, the concept that users of a product would add content to that product is an easy one to understand. In the case of Saḥnūn's *Mudawwana*, updating has been happening to "his" text since he first began teaching his lessons as a *qāḍī* in Kairouan in the region of the Maghrib.

The book that we have today, entitled *al-Mudawwana al-kubrā*, is related to, but is not in fact, the same product for which Saḥnūn is directly responsible. The modern book has been influenced by numerous personalities over the centuries beginning with the initial creation at the hands of Saḥnūn. Although Mālik's words and dicta are a vital part of the content of the book, along with the teaching of Ibn al-Qāsim, neither of them should be given credit for the creation of the *Mudawwana*, nor should the text be referred to as Mālik's *Mudawwana* nor Ibn al-Qāsim's *Mudawwana*. The evidence supports the belief that it was Saḥnūn who was responsible for the genesis of this work. However, alone, without the content of Mālik and the opinions of Ibn al-Qāsim, Saḥnūn could not have created such a work.

The question of who should receive credit for the text has different answers depending on the perspective and time period one has of the text. The time period in which one lives will shape the questions asked. In modern times, the question revolves around who wrote the words down: Who put the sentences, with ink, on paper or parchment? In classical times, it was not the final recensionist, nor even some of the additional sources along the way which were the important names in creating the text. Rather it was the names that gave the

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text its authority which were celebrated. In order to be viable, a text needed not only someone who wrote the words down, but a name behind those words stamping their seal of approval on them. For this reason, during the medieval period, it is understandable why the text was referred to by some as "Mālik's book." Coming to the modern era, noting that as times change, and along them ideas and perspectives, the concept of the more significant role shifts to those who were responsible for the "creative" work of assembling the text—combining the authoritative dicta—still giving credit to the one responsible for speaking them, but adding a supportive text around it. In modern times, it is Saḥnūn's name which should be recognized on the front cover of the text. Mālik, and Ibn al-Qāsim, for that matter, still receive their fair share of credit. Yet Saḥnūn has been the personality which has shaped the material into something new.

Like perspectives of those responsible, the *Mudawwana* itself has not been a static object. As has been presented, there is no evidence to support the belief that Saḥnūn himself had a "book" in mind when he wrote his various writings on the legal understandings of the teachings of Mālik. That he himself wrote some things down cannot be in doubt, but that he actually wrote the text of the *kitāb*s, largely the way we read them today, cannot be assured. His teachings came to be written down in the form we would most recognize them, likely by his own pupils, based on writings that Saḥnūn himself must have made as a result of his education in Egypt. It is possible that Saḥnūn himself had written and dictated these lessons to his disciples before they then copied them into manuscript form, although no evidence so far uncovered can support (or refute) this speculation. There are no extant notebooks belonging to Saḥnūn. Given events that have taken place between then and now, this is not surprising. Nor are there any holographs of the *Mudawwana*, likely because they never existed in that form. It seems more likely that his students were the first ones to write the work down in the question and answer format which we read today of the content of the *Mudawwana*. Those that followed, while copying texts, had the freedom to insert in various

places phrases that indicated some teaching had come direct from Saḥnūn himself—"Saḥnūn said." Soon after the teaching had taken place, revisions were made. It seems most reasonable to believe, though, that Saḥnūn himself was responsible for the determination of various blocks of teaching which would eventually become the *kitāb*s of the *Mudawwana*.

It is hard to determine when the collection of *kitāb*s which make up the content of the *Mudawwana* first came to be gathered together, figuratively if not physically, with the name of *Mudawwana* being associated with it. The evidence presented though, seems to support the belief of Muranyi that it was the significant work of al-Qābisī which brought the *Mudawwana* together. It is most certain, though, that even with this sense of a "book" forming by the gathering of the *kitāb*s, that these *kitāb*s themselves continued to circulate independent of the others which "belonged together" in this new form.

Events from history may help to situate this collection during that time period. In reviewing the history of the region of Kairouan from chapter two, recall that the Aghlabids, a generally corrupt but powerful and industrious dynasty, reigned during the time of Saḥnūn. Following the Aghlabids came the arrival of the Fāṭimids. Although possibly of a more pious character, religious conflict with the Sunnīs would not have created an atmosphere to foster deep religious development, such as demonstrated in the *Mudawwana*. However, with the departure of the Fāṭimids to Egypt and the arrival of the Zīrids, an historical window of opportunity appears to have opened prior to the time of the invasion of the Banū Hilāl. It is during this time period when it seems most reasonable that the *Mudawwana* would have been formed in the sense of a book—the sense that the various *kitāb*s understood to have been taught and passed on by Saḥnūn were now part of a larger whole, a compendium of laws. This time period allowed other individuals like Ibn Abī Zayd al-Qayrawānī to influence the establishment of the Mālikī *madhhab*. Ibn Abī Zayd's own book, *al-Nawādir wa al-ziyādāt*, containing judgments not found in the *Mudawwana*, may have awakened a strong desire amongst other members of the ʿulamāʾ during his time to study anew the material within the

Mudawwana leading to the firm establishment of the Mālikī *madhhab* in the region. For such an establishment, a necessary text, such as Saḥnūn's would have secured the Mālikī position. Within one century of the death of al-Qābisī, at 476/1083-84, the manuscript for the 1323/1905 Cairo edition had been written, providing a *terminus ad quem* for the formation of the *Mudawwana* as a book.

The rise of the *Mudawwana* to its status as a text of such great import was also a journey in formation. A "*kitāb* of Asad" did exist, and the rivalry between the Ḥanafī and Mālikī *madhhab*s is attested to in the historical records. Evidence of the erasure of listening certificates connected with the *Asadiyya* (if I can be permitted to use that term) supports the idea of one text losing ground and importance. It is not clear that the *kitāb*s of Saḥnūn took a seat of preference and priority from their beginnings. It is not known how exactly it came about that Saḥnūn's text took priority, only that the historical record shows the *Mudawwana* came out on top in the end. It is entirely possible that Saḥnūn and "his book" received the honour they did as a result of the eventual triumph of the Mālikī *madhhab* over that of the Ḥanafī. For those in Kairouan, Saḥnūn was a home-grown scholar. He came to fame after the *miḥna* in his few short years as chief *qāḍī* near the end of his own life. In the face of opposition he remained firm in his belief in the Qurʾān despite the opposition he faced from the political authorities as a result of his resolute faith. He was a man of a certain degree of character, he did not bend under that pressure—but the tide turned and he was given his own hand at power. Saḥnūn was a man of retribution with little mercy—an attribute that was likely not decried by the people who existed in such turbulent and often violent events between tribes, dynasties and nations. The absence of clear evidence cannot verify how Saḥnūn and the *Mudawwana* eventually prevailed as the leading thought.

Up until the time of the *Mudawwana*'s rise to prominence, various roles had already been filled in the formation of the *Mudawwana*. Mālik and Ibn al-Qāsim, as well as *ḥadīth* and Qurʾānic quotations, fill the role as source material, Saḥnūn as creator, disciples of

Saḥnūn acting as editors and transmitters of the *kitāb*s and then finally, likely al-Qābisī filling the role of compiler or instigator of the book. It is not until this period of time that evidence exists for the concept of a specific group of *kitāb*s being thought of as belonging together in some form. That it was labelled and advertised as a "book" should not imply that it was treated as such by all other jurists and commentators. Yet just over one century later, the time of the commentators like Ibn Rushd, and more clearly that of al-Rajrājī, evidence demonstrates that commentators from both near and far in relation to the locus of Kairouan, refer to the text as a book in its own right.

Even in that period of time, though, what the "book" consisted of is not clear. The modern editions, all based to a large extent, on manuscripts from the medieval period, demonstrate through their texts unfixed names and an unfixed order of the *kitāb*s within the text. The best evidence for a fixed order is the table of contents provided by al-Qāḍī ʿIyāḍ. Yet even this order is not strictly followed in his own text of the commentary.

The formation of the *Mudawwana* did not end at the time of the commentaries. The *Mudawwana* of the medieval period eventually came to be known as *al-Mudawwana al-kubrā*, but not until 1323/1905. It was to be another more than eight centuries before that manuscript would be published in a new form, several *kitāb*s bound together in volumes, with a sense of continuity added to it through more consistent phrasal formulas and visual cues. The addition of the word *al-kubrā* to its title, likely borrowed from, or possibly even confused by, the Ibāḍī *Mudawwana*, gives the text a sense of grandeur. This splendour is not unwarranted given its immense size, but it was certainly not intended by the creator, nor even any of its medieval commentators, as being a part of its title. A new edition, in a new era, was given a new name.

The formation of the *Mudawwana* can rightly be divided into three distinct time periods: formative, classical and renaissance (*nahḍa*). Within each period individual

personalities, or those occupying a particular role such as transmitter or editor, have had varying influences on the different aspects of the formation of the *Mudawwana*.

The first period should be that classified as the formative period, involving the time period of the life of Saḥnūn. From the start, Saḥnūn's greatest influence on the *Mudawwana*, between the aspects of content, structure and presentation, has been on the content of the text. It appears that Saḥnūn's primary intent during this period was to gather information, both prior to and during his *riḥla* east, from authority figures such as Ibn al-Qāsim, and possibly to correct information passed on by others. Whether or not he brought along with him copies of the "*kitāb* of Asad" is irrelevant for this particular discussion. That Asad's work influenced Saḥnūn's should not be doubted, yet the specific influence that work had is unknown. Coupled with that prior work should be added Saḥnūn's own research and his gathering of source material while in Egypt. His return to Kairouan and subsequent teaching allowed that material to take form, either figuratively or physically, through his lessons with his disciples. He structured the content through the form of questions and answers, creating a structure of the content which has remained fixed through the centuries. It is highly doubtful that his disciples would have influenced the formation of the content in this matter, for no manuscripts vary from this format of Saḥnūn's teaching. Therefore using *masāʾil* must have been an early decision in the formation of the text and should be attributed, without doubt, to the times of Saḥnūn. So, Saḥnūn is afforded some significant influence in the area of structure along with content. In the matter of presentation, Saḥnūn's influence is not perceptible in either the manuscript witnesses or the modern editions. So concerning his influence on the formation of the *Mudawwana*, Saḥnūn can be said to have had a high influence on the content, a moderate influence on the structure and an imperceptible influence on the presentation. The death of Saḥnūn, and the beginning of his lessons being taught by the first generation of his disciples should be considered the transition between the

formative and classical periods in the formation of the *Mudawwana*. Further significant content was not added to the text after this time.

The second period in the formation of the *Mudawwana*, which I am calling the classical period, is a time in which the *Mudawwana* took on a written form, became structured to a high degree and began to be recognized rather consistently amongst jurists and scholars alike as having a high degree of relevance to contemporaneous events. During this time, there appears to have been a significant increase in the copying of the *Mudawwana*, with manuscripts found in a dispersed area throughout the Maghrib. Transmitters copying manuscripts would have influenced the content of the text slightly through marginal notations that may eventually have ended up in the text, as well as with the addition of subject headings. Besides subject headings, transmitters also influenced the structure of the work through the development of *kurrāsa*s containing one or more *kitāb*s. Presentation of the text was also significantly influenced during this time period with the addition of *kurrāsa* title pages, as well as the designation that the *kitāb*(s) came "*min al-Mudawwana*," admittedly affecting both structural and presentation aspects of its formation. With the current body of evidence, it is not possible to distinguish between the influence of those who came before al-Qābisī, such as Ibn Abī Zayd or his students, yet there was certainly influence for a period of time before, during and after the lifetime of al-Qābisī, as evidenced by Ibn Abī Zayd's own additional work on the topics discussed within the *Mudawwana*. The period did not stop with al-Qābisī either, as the commentators who came later, who should most certainly be included in this classical period, also influenced the conception of the *Mudawwana*. The influence of the commentators is the least significant of all the personalities and roles. The greatest role of the commentators seems to be the significance of their work as a litmus in demonstrating the perception that scholars have had of the *Mudawwana* over a two century period. This time began two centuries after the death of Saḥnūn, shortly following the time of al-Qābisī. During that 200 year spread, the commentators demonstrate a clear development in their perspective

of the text, seeing it move from the "book of Mālik," as referenced by al-Barādhiʿī, all the way to al-Qāḍī ʿIyāḍ's fixed nature of the *Mudawwana* complete with a listing of the *kitāb*s. Included in the commentaries, although a full century later, should rightly be al-Rajrājī, as he demonstrates the on-going solified perspective that the *Mudawwana* is indeed a book in its own right.

The renaissance (*al-nahḍa*) period in the formation of the *Mudawwana* begins in the 14th/20th century with the publication of the first modern edition of *al-Mudawwana al-kubrā*. The label renaissance signifies that this is a re-birth of something that existed previously. It comes out of the *Nahḍa* of culture and history within Arab civilization itself. The *nahḍa* of the *Mudawwana* brings a new form, being created out of what came before mixed with the influence of the modern editors. A new name accompanies this new form, *al-Mudawwana al-kubrā*. The editors have been divided into both an early and late renaissance period in the formation of the *Mudawwana* as those coming in the late period have significantly less influence over the modern editions than those in the early period. The primary influence of the modern editors in the early renaissance period is on the presentation of the text. This is accomplished through the publication of the text with the use of modern printing presses, the addition of religious symbolic form. The use of footnotes in the text, a title page for the work as a whole and the description of the manuscript used as the source for the edition all provide cues concerning the authority behind the text in the modern edition. Adding the names of the publishing companies onto the text is another layer of authority joined with the previous layers. The modern editors also have a moderate influence on the structure of the text through the division of the text into volumes, published in hard-cover, leather-bound books.

The late renaissance period furnishes the text with some improvements, but the major significance in the renaissance period takes place at the beginning of the 14th/20th century.

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Succeeding editions add supporting apparatus and one even introduces a structural development but these are of little consequence in the larger scheme of things.

Figure 15 on page 227 below provides a visual representation of the influence of the various personalities and roles on these characteristic aspects in the formation of the *Mudawwana*. The horizontal axis of the graph runs chronologically from left to right, denoting the personalities and roles described: Sahnun, the time of Ibn Abī Zayd, al-Qābisī, the commentators, and the modern editors, both early and late. The vertical axis provides a numerical scale upon which values are placed for the varying influence that each of the personalities/roles have had on the text. Granted the numerical values applied are somewhat subjective, and not based on analytical figures, there is a high degree of confidence, as the influence of the various roles/personalities can be distinguised between minimal, moderate, highly moderate, signficant and the like. So although this is not a mathematical analysis, nor should it be interpreted that way, it is illustrative of the comparative influence these roles/personalities have had on the formation of the *Mudawwana*. Three different aspects are analyzed on the three-dimensional graph, which are, from front to rear: content, structure and presentation. The visual dimension of the evidence will likely conjure new images in the mind of the reader as the influence of these various personalities is considered from a new perspective.

When reading a modern published edition of a formative/classical/medieval text, one must realize that what is seen on the page may not necessarily be what was intended by the original creator. One may assume that the text of the modern edition is based on manuscript witnesses, but modern editors are not forthcoming in declaring the sources for their editions. Simply noting that an edition is based on "significant new manuscript evidence" or "a complete manuscript from the 5th/11th century" does not allow for the transparency needed in which to conduct verifiable, scholarly historical research. This, though, is clearly not the

aim of the modern editor. Rather, his purpose is more suited to bringing the text closer/
making the
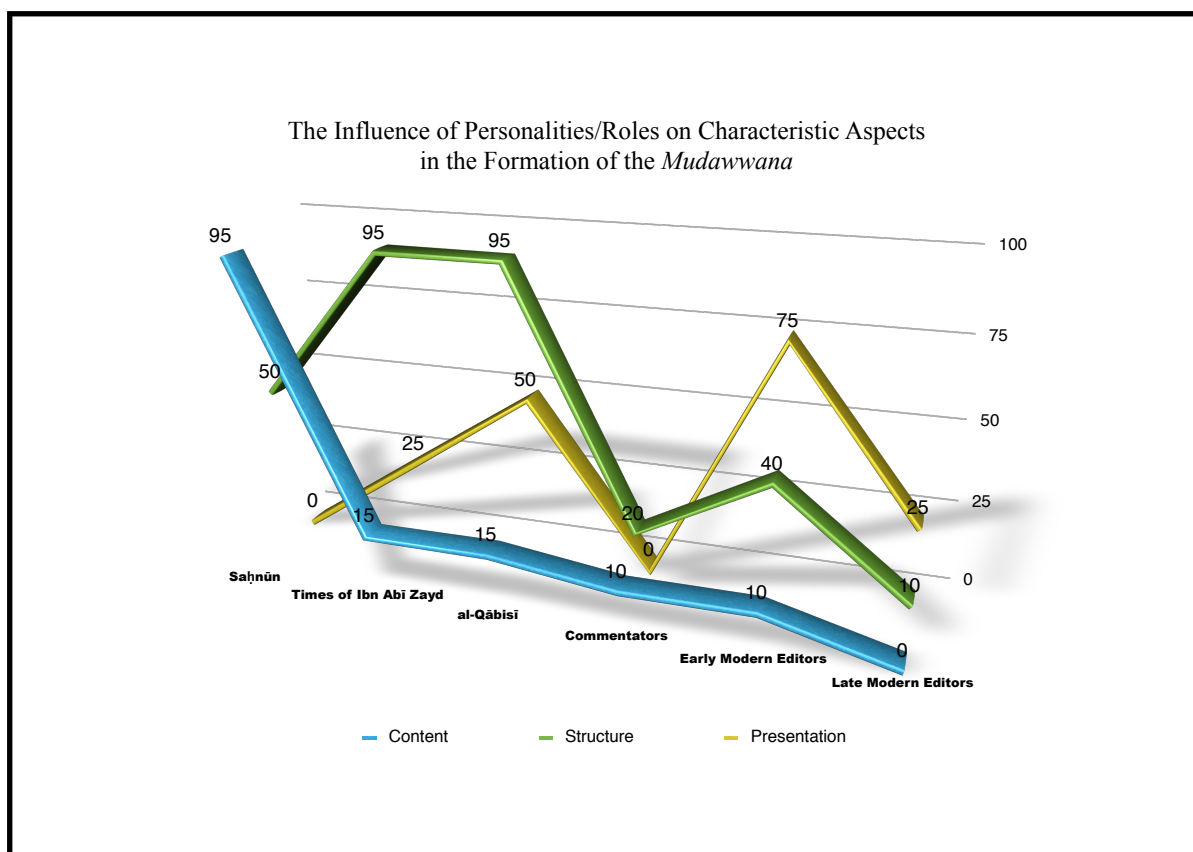
Figure 15. A Visual representation of the varying influences of personalities/roles on characteristic aspects in the formation of the *Mudawwana*.

text accessible to the reader. This objective requires textual decisions on his part, examples of which have been clearly presented above.

The *Mudawwana*, as a text, has been through a lengthy period of formation. Its primary genesis began with Saḥnūn in the early 3rd/9th century. Notes were taken, lessons were taught, and a text was generated. Some collaboration between teacher and student appears requisite with the roles of creator and editor and writer often flowing between different personalities. Some two hundred years later, manuscripts were copied which testify to the existence, in the minds of the copyists but not quite yet in the minds of the commentators, of a *Mudawwana*, a collection of these *kitāb*s begun with Saḥnūn's teaching. Transmitters copied old manuscripts onto new parchment, sometimes adding words or

phrases, birthing new variances within the text. Individual *kitāb*s were bound together providing definition and a sense of completeness. Over time, the virtual bond of these *kitāb*s with each other strengthens to where student and commentator alike recognize the transmission of knowledge and judgment from Mālik to Ibn al-Qāsim to Saḥnūn as a collection—a book has been formed, maybe not bound together fully, but nonetheless a book. Some centuries later, following an Arabic revival in works of the past, the book was re-shaped, re-formed. Modern editors presented the old *kitāb*s bound together in many volumes, portraying a unified sea of knowledge. Much of the content was the same, but with a new form, it took on a grand new name—*al-Mudawwana al-kubrā*. The formation of the *Mudawwana* may have begun in the 3rd/9th century, but it has shown no signs of ceasing.

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Appendices

Table of Transliteration and Translation of *kitābs* and section groupings

rizma according to Fes ms Qarawiyyīn 577	*kurrāsa grouping according to BL Or 6586*	*kitāb of the Mudawwana*	Transliteration	Translation
		[كتاب الوضوء]	*al-Wuḍūʾ*	Book of ablutions/ritual purity
		كتاب الصلاة	*al-Ṣalāt*	Book of ritual prayer
		كتاب الصلاة الثاني	*al-Ṣalāt al-thānī*	Second book of ritual prayer
		كتاب الجنائز	*al-Janāʾiz*	Book of burial rites
		كتاب الصيام	*al-Ṣiyām*	Book of fasting
		كتاب الاعتكاف	*al-Iʿtikāf*	Book of seclusion in a mosque (e.g. prayer and meditation in the mosque) (Bousquet has translated this book title into French as *Livre de la Retraite Spirituelle*; his article on *ʿibādāt El2* in English translating it as spiritual retreat.)
		كتاب الاعتكاف بغير صوم	*al-Iʿtikāf bi-ghayr ṣawm*	Book of zealously following God [apart from fasting (e.g. prayer and meditation or separation in the mosque)]
rizmat al-Sharāʾiʿ		كتاب الزكاة الأول	*al-Zakāt al-awwal*	First book of alms
		كتاب الزكاة الثاني	*al-Zakāt al-thānī*	Second book of zakat
		كتاب الحج الأول	*al-Ḥajj al-awwal*	First book of hajj
		كتاب الحج الثاني	*al-Ḥajj al-thānī*	Second book of hajj
		كتاب الحج الثالث	*al-Ḥajj al-thālith*	Third book of hajj
		كتاب الجهاد	*al-Jihād*	Book of jihad
		كتاب الصيد	*al-Ṣaid*	Book of hunting
		كتاب الذبائح	*al-Dhabāʾiḥ*	Book of animal slaughter
		كتاب الضحايا	*al-Ḍaḥāyā*	Book of blood sacrifices
		كتاب العقيقة	*al-ʿAqīqa*	Book of the sacrifice of an animal for a newly born child on the shaving of its hair on the seventh day
		كتاب النذور الأول	*al-Nudhūr al-awwal*	First book of vows
		كتاب النذور الثاني	*al-Nudhūr al-thānī*	Second book of vows
		كتاب طلاق السنة	*Ṭalāq al-sunna*	Book of *sunna* divorce
		كتاب الأيمان بالطلاق	*al-Īmān bi'l-ṭalāq*	Book of belief in divorce
		كتاب النكاح الأول	*al-Nikāḥ al-awwal*	First book of marriage contracts
		كتاب النكاح الثاني	*al-Nikāḥ al-thānī*	Second book of marriage contracts
		كتاب النكاح الثالث	*al-Nikāḥ al-thālith*	Third book of marriage contracts
		كتاب النكاح الرابع	*al-Nikāḥ al-rābiʿ*	Fourth book of marriage contracts
		كتاب النكاح الخامس	*al-Nikāḥ al-khāmis*	Fifth book of marriage contracts
		كتاب النكاح السادس	*al-Nikāḥ al-sādis*	Sixth book of marriage contracts
		كتاب إرخاء الستور	*Irkhā al-sutūr*	Book of the lowering of the veils/coverings/covers
		كتاب التخيير والتمليك	*al-takhyīr wa'l-tamlīk*	Book of choice/refusal and transfer of ownership
rizmat al-Nikāḥ		كتاب الرضاع	*al-Riḍāʿ*	Book of breast-feeding
		كتاب العدة وطلاق السنة	*al-ʿIdda wa-ṭalāq al-sunna*	Book of normative and *sunna* divorce

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Table of Transliteration and Translation of *kitābs* and section groupings

Group		Arabic	Transliteration	Translation
		كتاب طلاق السنة	*Ṭalāq al-sunna*	Book of *sunna* divorce
		كتاب الأيمان بالطلاق وطلاق المريض	*al-Aymān bi'l-ṭalāq wa-ṭalāq al-marīḍ*	Book of oaths in divorce and divorce of the sick
		كتاب الظهار	*al-Ẓihār*	Book of injurious assimilation
	20	كتاب الإيلاء	*al-Īlāʾ*	Book of vow of continence (the annulment of a marriage after the husband's sworn testimony to have refrained from sexual intercourse for a period of at least four months)
		كتاب اللعان	*al-Liʿān*	Book of imprecation (specifically the sworn allegation of adultery committed by either husband or wife)
		كتاب الإيلاء واللعان	*al-Īlāʾ wa'l-liʿān*	Book of oaths and curses
???		كتاب الاستبراء	*al-Istibrāʾ*	Book of healing, freeing from/ridding of oneself
rizmat al-ʿAbīd		كتاب العتق الأول	*al-ʿItq al-awwal*	First book of manumission
		كتاب العتق الثاني	*al-ʿItq al-thānī*	Second book of manumission
		كتاب المكاتب	*al-Makātib*	Book of contractual manumission
		كتاب التدبير	*al-Tadbīr*	Book of manumission by will (upon the death of the owner)
		كتاب أمهات الأولاد	*Ummahāt al-Awlād*	Book of the mothers of the children, i.e. children born in slavery
		كتاب الولاء	*al-Walāʾ*	Book of clientage
		كتاب المواريث	*al-Mawārīth*	Book of inheritances/legacies
		كتاب الولاء والمواريث	*al-Walāʾ wa'l-mawārīth*	Book of clientage and inheritances/legacies
rizmat al-Buyūʿ		كتاب الصرف	*al-Ṣarf*	Book of bartering
		كتاب السلم الأول	*al-Salam al-awwal*	First book of advanced sales
		كتاب السلم الثاني	*al-Salam al-thānī*	Second book of advanced sales
		كتاب السلم الثالث	*al-Salam al-thālith*	Third book of advanced sales
		كتاب الآجال	*al-Ājāl*	Book of due date for deferred dowry payment
		كتاب بيوع الآجال	*Buyūʿ al-ājāl*	Book of deferred sales
		كتاب البيوع الفاسدة	*al-Buyūʿ al-fāsida*	Book of corrupt/spoiled sales
		كتاب بيع الخيار	*Bayʿ al-khiyār*	Book of optional sale
		كتاب البيعين بالخيار	*al-Bayʾayn bi'l-khiyār*	Book of sales by option
		كتاب بيعين الخيار	*Bayʿayn al-khiyār*	Book of sales of option
		كتاب الغرر	*al-Gharar*	Book of hazards
		كتاب بيع الغرر	*Bayʿ al-gharar*	Book of hazardous sales
		كتاب بيع المرابحة	*Bayʿ al-murābaḥa*	Book of sales of profit
	x	كتاب المرابحة	*al-Murābaḥa*	Book of profitable resale
	x	كتاب الوكالات	*al-Wakālāt*	Book of administrative agencies
		كتاب العرايا	*al-ʿArāyā*	Book of administrative agencies
		كتاب التجارة بأرض العدو	*al-Tijāra bi-arḍ al-ʿadū*	Book of trade in enemy territory/lands
		كتاب التدليس	*al-Tadlīs*	Book of fraud
		كتاب التدليس بالعيوب	*al-Tadlīs bi'l-ʿuyūb*	Book of fraud by defects
		كتاب الصلح	*al-Ṣulḥ*	Book of the concluding of peace
rizmat al-Ijāra	x	كتاب تضمين الصناع	*Taḍmīn al-ṣunnāʿ*	Book of responsibility, security and liability of the artisan
		كتاب الجعل والإجارة	*al-Jaʿl wa'l-ijāra*	Book of wages and leasing/renting out

Table of Transliteration and Translation of *kitābs* and section groupings

		كتاب كراء الرواحل والدواب	*Kirāʾ al-rawāḥil waʾl-dawāb*	Book of the rental of female riding camels and other riding animals (horse, mule donkey)
		كتاب كراء الدور	*Kirāʾ al-dūr*	Book of house rental
		كتاب كراء الأرضين	*Kirāʾ al-araḍīn*	Book of land rental
		كتاب كراء الدور والأرضين	*Kirāʾ al-dūr waʾl-araḍīn*	Book of house and land rental
	37	كتاب المساقاة	*al-Musāqāh*	Book of sharecropping contract over the lease of a plantation, limited to one crop period
	37	كتاب الجوائح	*al-Jawāʾiḥ*	Book of calamities
	40	كتاب الشركة	*al-Shirka*	Book of partnership
		كتاب القراض	*al-Qirāḍ*	Book of loans
		كتاب الأقضية	*al-Aqḍiya*	Book of judgments
		كتاب القضاء	*al-Qaḍāʾ*	Book of administration of law
		كتاب الشهادات	*al-Shahādāt*	Book of testimonies
		كتاب الدعوى	*al-Daʿawā*	Book of claims
		كتاب المديان	*al-Midyān*	Book of debtors
		كتاب التفليس	*al-Taflīs*	Book of bankruptcy
		كتاب المأذون له في التجارة	*al-Maʾdhūn lahu fīʾl-tijāra*	Book of slaves authorized in commerce
		كتاب الكفالة والحمالة	*al-Kafāla waʾl-ḥamāla*	Book of conjoining responsibility and a debt or obligation that must be paid
		كتاب الحوالة	*al-Ḥawāla*	Book of debt transfers
		كتاب الرهن	*al-Rahn*	Book of pledges
		كتاب الغصب	*al-Ghaṣb*	Book of unlawful seizure
		كتاب الاستحقاق	*al-Istiḥqāq*	Book of rightful return of property/vindication?
		كتاب الشفعة الأول	*al-Shufʿa al-awwal*	First book of Preemption
		كتاب الشفعة الثاني	*al-Shufʿa al-thānī*	Second book of Preemption
rizmat al-Aqḍiya (???)		كتاب القسمة الأول	*al-Qisma al-awwal*	First book of divisions
		كتاب القسمة الثاني	*al-Qisma al-thānī*	Second book of divisions
		كتاب الوصايا الأول	*al-Waṣāyā al-awwal*	First book of bequests
		كتاب الوصايا الثاني	*al-Waṣāyā al-thānī*	Second book of bequests
	50	كتاب الهبات	*al-Hibāt*	Book of donations
		كتاب الحبس	*al-Ḥubus*	Book of inalienable property (charitable trusts)
		كتاب الصدقة	*al-Ṣadaqa*	Book of charitable giving
		كتاب الهبة	*al-Hiba*	Book of donation
	50	كتاب الوديعة	*al-Wadīʿa*	Book of entrusting something to someone/deposit
	50	كتاب العارية	*al-ʿĀriyya*	Book of barren land/gibbous tract
	37	كتاب اللقطة والضوال والآبق	*al-Luqaṭa waʾl-ḍawāl waʾl-ābiq*	Book of the gleanings and the small things and the (repeat) fugitive slave
		كتاب حريم الآبار	*Ḥarīm al-ābār*	Book of separated space around wells
		كتاب الحدود في الزنا والقذف والأشربة	*al-Ḥudūd fīʾl-zināʾ waʾl-qadhf waʾl-ashriba*	Book of maximum legal punishment in the case of fornication and false accusation (esp. of fornication) and wine (alcholic drinks)

Table of Transliteration and Translation of *kitābs* and section groupings

		Arabic	Transliteration	Translation
		كتاب الحدود في الزنا والقذف	*al-Ḥudūd fī'l-zināʾ waʾl-qadhf*	Book of maximum legal punishment in the case of fornication and false accusation (esp. of fornication)
		كتاب الرجم	*al-Rajm*	Book of lapidation
		كتاب الأشربة	*al-Ashriba*	Book of wine (alcholic drinks)
		كتاب السرقة	*al-Sariqa*	Book of theft
		كتاب المحاربين	*al-Muḥāribīn*	Book of military soldiers
		كتاب المحاربون	*al-Muḥāribūn*	Book of military soldiers
		كتاب الجراحات	*al-Jirāḥāt*	Book of the injured
		كتاب الجنايات	*al-Jināyāt*	Book of offences (for which one should be punished in the now and the hereafter)
		كتاب الديات	*al-Diyāt*	Book of blood money

A Comparison of the *kitāb*s of four modern editions of the *Mudawwana*

#	CAIRO 1323/1905 Maṭbaʿat ʾl-Saʿāda — Cairo [offset reprint edition (nd) - Dar Ṣādir, Beirut] *kitāb*	Offset reprint volume	Original Vol/juzʾ	starts on page	ends on page	pages	BEIRUT 1994 Dār al-Kutub al-ʿIlmiyya — Beirut *kitāb*	Vol/juzʾ	starts on page	ends on page	pages	MECCA 1999 al-Maktaba al-ʿAṣriyya — Mecca, Ṣayda *kitāb*	Vol/juzʾ	starts on page	ends on page	pages	ABU DHABI 2005 Muʾassasat al-Nadāʾ — Abu Dhabi *kitāb*	Vol/juzʾ	starts on page	ends on page	pages
1	[كتاب الوضوء]	1	1	2	55	54	كتاب الوضوء	1	113	155	43	كتاب الوضوء	1	119	176	58	كتاب الوضوء	1	27	122	96
2	كتاب الصلاة	1	1	55	109	55	كتاب الصلاة الأول	1	156	198	43	كتاب الصلاة	1	177	234	58	كتاب الصلاة	1	123	325	203
3	كتاب الصلاة الثاني	1	1	109	174	66	كتاب الصلاة الثاني	1	199	250	52	كتاب الصلاة الثاني	1	235	302	68					
4	كتاب الجنائز	1	1	174	191	18	كتاب الجنائز	1	251	264	14			303	318	16	كتاب الجنائز	1	326	352	27
5	كتاب الصيام	1	1	191	225	35	كتاب الصيام	1	265	289	25			319	349	31	كتاب الصيام	1	353	404	52
6	كتاب الاعتكاف	1	1	225	240	16	كتاب الاعتكاف بغير صوم	1	290	301	12	كتاب الاعتكاف بغير صوم	1	350	362	13	كتاب الاعتكاف	1	405	427	23
7	كتاب الزكاة الأول	1	2	242	305	64	كتاب الزكاة الأول	1	302	350	49	كتاب الزكاة الأول	2	365	418	54	كتاب الزكاة	1	428	600	173
8	كتاب الزكاة الثاني	1	2	306	359	54	كتاب الزكاة الثاني	1	351	393	43	كتاب الزكاة الثاني	2	419	466	48					
9	كتاب الحج الأول	1	2	360	425	66	كتاب الحج الأول	1	394	438	45	كتاب الحج الأول	2	467	516	50	كتاب الحج	2	5	212	208
10	كتاب الحج الثاني	1	2	426	482	57	كتاب الحج الثاني	1	439	478	40	كتاب الحج الثاني	2	517	560	44					
11	كتاب الحج الثالث	1	2	483	504	22	كتاب الحج الثالث	1	479	495	17	كتاب الحج الثالث	2	561	580	20					
12	كتاب الجهاد	2	3	2	50	49	كتاب الجهاد	1	496	531	36	كتاب الجهاد	2	581	626	46	كتاب الجهاد	2	213	283	71
13	كتاب الصيد	2	3	51	63	13	كتاب الصيد	1	532	541	10	كتاب الصيد	2	627	638	12	كتاب الصيد	2	284	301	18
14	كتاب الذبائح	2	3	64	68	5	كتاب الذبائح	1	542	545	4	كتاب الذبائح	2	639	642	4	كتاب الذبائح	2	302	308	7
15	كتاب الضحايا	2	3	69	75	7	كتاب الضحايا	1	546	553	8	كتاب الضحايا	2	643	650	8	كتاب الضحايا	2	309	319	11
16							كتاب العقيقة	1	554	554	1						كتاب العقيقة	2	320	320	1
17	كتاب النذور الأول	2	3	76	110	35	كتاب النذور الأول	1	555	617	63	كتاب النذور الأول	2	651	713	63	كتاب النذور	2	321	435	115
18	كتاب النذور الثاني	2	3	111	149	39															
19							كتاب طلاق السنة	2	3	58	56	كتاب طلاق السنة	3	716	768	53					
20							كتاب الأيمان بالطلاق	2	59	97	39	كتاب الأيمان بالطلاق	3	768	806	39					
21	كتاب النكاح الأول	2	4	152	180	29	كتاب النكاح الأول	2	98	145	48	كتاب النكاح الأول	3	807	856	50	كتاب النكاح	2, 3	436	614	179
22	كتاب النكاح الثاني	2	4	181	215	35															
23	كتاب النكاح الثالث	2	4	216	245	30	كتاب النكاح الثاني	2	146	192	47	كتاب النكاح الثاني	3	857	902	46					
24	كتاب النكاح الرابع	2	4	246	272	27												3	5	60	56
25	كتاب النكاح الخامس	2	4	273	296	24	كتاب النكاح الثالث	2	193	228	36	كتاب النكاح الثالث	3	903	940	38					
26	كتاب النكاح السادس	2	4	297	318	22							3								
27	كتاب إرخاء الستور	2	5	320	372	53	كتاب إرخاء الستور	2	229	270	42	كتاب إرخاء الستور	3	941	984	44	كتاب إرخاء الستور	3	61	136	76
28	كتاب التخيير والتمليك	2	5	373	404	32	كتاب التخيير والتمليك	2	271	294	24	كتاب التخيير والتمليك	3	985	1048	64	كتاب التخيير والتمليك	3	137	180	44
29	كتاب الرضاع	2	5	405	418	14	كتاب الرضاع	2	295	306	12						كتاب الرضاع	3	181	200	20
30	كتاب العدة وطلاق السنة	2	5	419	482	64											كتاب العدة وطلاق السنة	3	201	296	96
31	كتاب الأيمان بالطلاق وطلاق المريض	3	6	2	48	47											كتاب الأيمان بالطلاق	3	297	364	68
32	كتاب الظهار	3	6	49	83	35	كتاب الظهار	2	307	335	29	content found in كتاب التخيير والتمليك					كتاب الظهار	3	365	415	51
33	كتاب الإيلاء واللعان	3	6	84	120	37	كتاب الإيلاء	2	336	351	16	كتاب الإيلاء	3	1049	1064	16	كتاب الإيلاء	3	416	445	30
34							كتاب اللعان	2	352	364	13	كتاب اللعان	3	1065	1078	14	كتاب اللعان	3	446	470	25
35	كتاب الاستبراء	3	6	121	147	27	كتاب الاستبراء	2	365	386	22	كتاب الاستبراء	3	1079	1098	20	كتاب الاستبراء	3	471	506	36
36	كتاب العتق الأول	3	7	150	197	48	كتاب العتق الأول	2	387	426	40	كتاب العتق الأول	4	1101	1140	40	كتاب العتق الأول	3	507	620	114
37	كتاب العتق الثاني	3	7	198	229	32	كتاب العتق الثاني	2	427	453	27	كتاب العتق الثاني	4	1141	1166	26					
38	كتاب المكاتب	3	7	230	292	63	كتاب المكاتب	2	454	509	56	كتاب المكاتب	4	1167	1220	54	كتاب المكاتب	4	5	92	88
39	كتاب التدبير	3	8	294	314	21	كتاب التدبير	2	510	528	19	كتاب التدبير	4	1221	1238	18	كتاب التدبير	4	93	220	128
40	كتاب أمهات الأولاد	3	8	315	346	32	كتاب أمهات الأولاد	2	529	557	29	كتاب أمهات الأولاد	4	1239	1264	26	كتاب أمهات الأولاد	4	221	164	-56
41	كتاب الولاء والمواريث	3	8	347	392	46	كتاب الولاء والمواريث	2	558	585	28	كتاب الولاء والمواريث	4	1265	1290	26	كتاب الولاء	4	165	208	44
42							كتاب المواريث	2	586	600	15	كتاب المواريث	4	1291	1304	14	كتاب المواريث	4	209	233	25
43	كتاب الصرف	3	8	393	447	55	كتاب الصرف	3	3	53	51	كتاب الصرف	4	1305	1348	44	كتاب الصرف	4	234	312	79
44	كتاب السلم الأول	4	9	2	36	35	كتاب السلم الأول	3	54	85	32	كتاب السلم الأول	4	1349	1378	30	كتاب السلم	4	313	469	157
45	كتاب السلم الثاني	4	9	37	74	38	كتاب السلم الثاني	3	86	121	36	كتاب السلم الثاني	4	1379	1408	30					
46	كتاب السلم الثالث	4	9	75	116	42	كتاب السلم الثالث	3	122	159	38	كتاب السلم الثالث	4	1409	1446	38					
47	كتاب الآجال	4	9	117	144	28	كتاب الآجال	3	160	184	25	كتاب بيوع الآجال	4	1447	1464	18	كتاب الآجال	4	470	**508**	39
48	كتاب البيوع الفاسدة	4	9	145	167	23	كتاب البيوع الفاسدة	3	185	205	21	كتاب البيوع الفاسدة	4	1465	1483	19	كتاب البيوع الفاسدة	4	509	539	31
49	كتاب بيع الخيار	4	10	170	204	35	كتاب البيعين بالخيار	3	206	237	32	كتاب بيعين بالخيار	5	1484	1512	29	كتاب البيعين بالخيار	4	540	587	48
50							كتاب المرابحة	3	238	252	15	كتاب المرابحة	5	1513	1527	15	كتاب المرابحة	4	588	608	21

A Comparison of the *kitāb*s of four modern editions of the *Mudawwana*

#	CAIRO						BEIRUT					MECCA					ABU DHABI				
51	كتاب بيع الغرر	4	10	205	225	21	كتاب الغرر	3	253	270	18	كتاب الغرر	5	1528	1546	19	كتاب الغرر	5	5	32	28
52	كتاب بيع المرابحة	4	10	226	242	17															
53	كتاب الوكالات	4	10	243	257	15	كتاب الوكالات	3	271	283	13	كتاب الوكالات	5	1547	1554	8	كتاب الوكالات	5	33	52	20
54	كتاب العرايا	4	10	258	269	12	كتاب العرايا	3	284	293	10	كتاب العرايا	5	1555	1564	10	كتاب العرايا	5	53	68	16
55	كتاب التجارة بأرض العدو	4	10	270	299	30	كتاب التجارة إلى أرض العدو	3	294	320	27	كتاب التجارة بأرض العدو	5	1565	1590	26	كتاب التجارة إلى أرض العدو	5	69	111	43
56	كتاب التدليس	4	10	300	358	59	كتاب التدليس بالعيوب	3	321	374	54	كتاب التدليس بالعيوب	5	1591	1638	48	كتاب التدليس بالعيوب	5	112	193	82
57	كتاب الصلح	4	11	360	386	27	كتاب الصلح	3	375	398	24	كتاب الصلح	5	1639	1662	24	كتاب الصلح	5	194	229	36
58	كتاب تضمين الصناع	4	11	387	401	15	كتاب تضمين الصناع	3	399	413	15	كتاب تضمين الصناع	5	1663	1678	16	كتاب تضمين الصناع	5	230	251	22
59	كتاب الجعل والإجارة	4	11	402	462	61	كتاب الجعل والإجارة	3	414	471	58	كتاب الجعل والإجارة	5	1679	1726	48	كتاب الجعل والإجارة	5	252	341	90
60	كتاب كراء الرواحل والدواب	4	11	463	504	42	كتاب كراء الرواحل والدواب	3	472	510	39	كتاب كراء الرواحل والدواب	5	1727	1760	34	كتاب كراء الرواحل والدواب	5	342	399	58
61	كتاب كراء الدور والأرضين	4	11	505	559	55	كتاب كراء الدور والأرضين	3	511	532	22	كتاب كراء الدور والأرضين	5	1761	1778	18	كتاب كراء الدور	5	400	431	32
62							كتاب كراء الأرضين	3	533	561	29	كتاب كراء الأرضين	5	1779	1806	28	كتاب كراء الأرضين	5	432	476	45
63	كتاب المساقاة	5	12	2	24	23	كتاب المساقاة	3	562	580	19	كتاب المساقاة	5	1807	1826	20	كتاب المساقاة	5	477	512	36
64	كتاب الجوائح	5	12	25	39	15	كتاب الجوائح	3	581	592	12	كتاب الجوائح	5	1827	1840	14	كتاب الجوائح	5	513	532	20
65	كتاب الشركة	5	12	40	85	46	كتاب الشركة	3	593	628	36	كتاب الشركة	6	1841	1878	38	كتاب الشركة	5	533	597	65
66	كتاب القراض	5	12	86	131	46	كتاب القراض	3	629	664	36	كتاب القراض	6	1879	1916	38	كتاب القراض	6	5	66	62
67	كتاب الأقضية	5	12	132	144	13	كتاب الأقضية	4	3	12	10	كتاب الأقضية	6	1917	1926	10	كتاب الأقضية	6	67	84	18
68	كتاب القضاء	5	12	144	149	6	كتاب القضاء	4	13	17	5	كتاب القضاء	6	1927	1932	6	كتاب القضاء	6	85	93	9
69	كتاب الشهادات	5	13	152	177	26	كتاب الشهادات	4	18	37	20	كتاب الشهادات	6	1933	1954	22	كتاب الشهادات	6	94	132	39
70	كتاب الدعوى	5	13	178	203	26	كتاب الدعوى	4	38	58	21	كتاب الدعوى	6	1955	1978	24	كتاب الدعوى	6	133	171	39
71	كتاب المديان	5	13	204	225	22	كتاب المديان	4	59	75	17	كتاب المديان	6	1979	1996	18	كتاب المديان	6	172	202	31
72	كتاب التفليس	5	13	226	241	16	كتاب التفليس	4	76	87	12	كتاب التفليس	6	1997	2010	14	كتاب التفليس	6	203	224	22
73	كتاب المأذون له في التجارة	5	13	242	251	10	كتاب المأذون له في التجارة	4	88	95	8	كتاب المأذون له في التجارة	6	2011	2018	8	كتاب المأذون له في التجارة	6	225	237	13
74	كتاب الكفالة والحمالة	5	13	252	287	36	كتاب الكفالة والحمالة	4	96	125	30	كتاب الكفالة والحمالة	6	2019	2048	30	كتاب الكفالة والحمالة	6	238	287	50
75	كتاب الحوالة	5	13	288	294	7	كتاب الحوالة	4	126	130	5	كتاب الحوالة	6	2049	2054	6	كتاب الحوالة	6	288	296	9
76	كتاب الرهن	5	14	296	340	45	كتاب الرهن	4	131	168	38	كتاب الرهن	6	2055	2090	36	كتاب الرهن	6	297	360	64
77	كتاب الغصب	5	14	341	371	31	كتاب الغصب	4	169	191	23	كتاب الغصب	6	2091	2115	25	كتاب الغصب	6	361	400	40
78	كتاب الاستحقاق	5	14	372	398	27	كتاب الاستحقاق	4	192	212	21	كتاب الاستحقاق	6	2116	2136	21	كتاب الاستحقاق	6	401	437	37
79	كتاب الشفعة الأول	5	14	399	431	33	كتاب الشفعة الأول	4	213	239	27	كتاب الشفعة الأول	6	2137	2164	28	كتاب الشفعة	6	438	525	88
80	كتاب الشفعة الثاني	5	14	432	461	30	كتاب الشفعة الثاني	4	240	264	25	كتاب الشفعة الثاني	6	2165	2190	26					
81	كتاب القسمة الأول	5	14	462	497	36	كتاب القسمة الأول	4	265	293	29	كتاب القسمة الأول	6	2191	2220	30	كتاب القسمة	6	526	617	92
82	كتاب القسمة الثاني	5	14	498	532	35	كتاب القسمة الثاني	4	294	320	27	كتاب القسمة الثاني	7	2221	2248	28					
83	كتاب الوصايا الأول	6	15	2	44	43	كتاب الوصايا الأول	4	321	355	35	كتاب الوصايا الأول	7	2249	2285	37	كتاب الوصايا	7	5	112	108
84	كتاب الوصايا الثاني	6	15	45	78	34	كتاب الوصايا الثاني	4	356	381	26	كتاب الوصايا الثاني	7	2285	2312	28					
85	كتاب الهبات	6	15	79	97	19	كتاب الهبات	4	382	395	14	كتاب الهبات	7	2313	2326	14	كتاب الهبات	7	113	136	24
86							كتاب الهبة	4	396	416	21	كتاب الهبة	7	2327	2348	22	كتاب الهبة	7	137	176	40
87	كتاب الحبس	6	15	98	111	14	كتاب الحبس والصدقة	4	417	427	11	كتاب الحبس والصدقة	7	2349	2360	12	كتاب الحبس والصدقة	7	177	197	21
88	كتاب الصدقة	6	15	112	117	6	كتاب الصدقة	4	428	432	5	كتاب الصدقة	7	2361	2366	6	كتاب الصدقة	7	198	205	8
89	كتاب الهبة	6	15	118	143	26															
90	كتاب الوديعة	6	15	144	161	18	كتاب الوديعة	4	433	446	14	كتاب الوديعة	7	2367	2380	14	كتاب الوديعة	7	206	229	24
91	كتاب العارية	6	15	162	172	11	كتاب العارية	4	447	454	8	كتاب العارية	7	2381	2388	8	كتاب العارية	7	230	244	15
92	كتاب اللقطة والضوال والأبق	6	15	173	188	16	كتاب اللقطة والضوال	4	455	460	6	كتاب اللقطة والضوال	7	2389	2394	6	كتاب اللقطة والضوال	7	245	255	11
93							كتاب الآبق	4	461	467	7	كتاب الآبق	7	2395	2400	6	كتاب الآبق	7	256	266	11
94	كتاب حريم الآبار	6	15	189	200	12	كتاب حريم الآبار	4	468	476	9	كتاب حريم الآبار	7	2401	2410	10	كتاب حريم الآبار	7	267	282	16
95	كتاب الحدود في الزنا والقذف والأشربة	6	16	202	234	33	كتاب الحدود في الزنا والقذف	4	477	502	26	كتاب الحدود في الزنا والقذف	7	2411	2438	28	كتاب الحدود في الزنا والقذف	7	283	364	82
96	كتاب الرجم	6	16	235	260	26	كتاب الرجم	4	503	522	20	كتاب الرجم	7	2439	2459	21					
97	كتاب الأشربة	6	16	261	264	4	كتاب الأشربة	4	523	525	3	كتاب الأشربة	7	2460	2462	3	كتاب الأشربة	7	365	369	5
98	كتاب السرقة	6	16	265	297	33	كتاب السرقة	4	526	551	26	كتاب السرقة	7	2463	2488	26	كتاب السرقة	7	370	417	48
99	كتاب المحاربين	6	16	298	305	8	كتاب المحاربين	4	552	557	6	كتاب المحاربين	7	2489	2494	6	كتاب المحاربون	7	418	428	11
100	كتاب الجراحات	6	16	306	327	22	كتاب الجراحات	4	558	574	17	كتاب الجراحات	7	2495	2512	18	كتاب الجراحات	7	429	460	32
101	كتاب الجنايات	6	16	328	394	67	كتاب الجنايات	4	575	626	52	كتاب الجنايات	7	2513	2566	54	كتاب الجنايات	7	461	555	95
102	كتاب الديات	6	16	395	456	62	كتاب الديات	4	627	674	48	كتاب الديات	7	2567	2616	50	كتاب الديات	7	556	644	89
	93 *kitāb*s					2849	94 *kitāb*s				2437	89 *kitāb*s				2494	80 *kitāb*s				4250

A comparison of the kitābs found in five commentaries of the *Mudawwana* and the *kitāb* list of the 1323/1905 Cairo edition

	B	D		G		I	M		O	
	1323/1905 Cairo Edition	**al-Barādhiʿī**		**Ibn Rushd**		**al-Qāḍī ʿIyāḍ**	**al-Rajrājī**		**al-Jubbī**	
	1323/1905 Maṭbaʿat ʾl-Saʿāda	***al-Tahdhīb fī ikhtiṣār al-mudawwana***		***al-Muqaddimāt al-mumahhidāt: li-bayān māʾqtaḍathu rusūm al-mudawwana min al-aḥkām al-sharʿiyyāt waʾl-taḥṣīlāt al-muḥkamāt li-ummahāt masāʾilihā ʾl-mushkilāt***		***al-Tanbīhāt al-mustanbaṭa ʿala ʾl-kutub al-mudawwana waʾl–mukhtaliṭa***	***Manāhij al-taḥṣīl wa-natāʾij laṭāʾif al-taʾwīl fī sharḥ al-mudawwana wa-ḥall mushkilātihā***		***Kitāb sharḥ gharīb alfāẓ al-mudawwana***	
	offset reprint edition (nd) - Dar Ṣādir	al-Barādhiʿī (d. 438/1046-47), Dār al-Gharb al-Islāmī, 1988		Ibn Rushd (d. 520/1126), Dār al-Gharb al-Islāmī, 1988		al-Qāḍī ʿIyāḍ (ʿIyāḍ b. Mūsā, d. 544/1149)	al-Rajrājī (d. 633/1235), Dār Ibn Hazm 2007		al-Jubbī (d. c. 4th-5th/10th-11th century), Dār al-Gharb al-Islāmī, 2005	
	kitāb	*kitāb*	Vol.	*kitāb*	Vol.	*kitāb*	*kitāb*	Vol.	*kitāb*	No. of pages
7	[كتاب الوضوء]	كتاب الطهارة	1	الوضوء	1	كتاب الوضوء والطهارة	كتاب الطهارة	1	تفسير كتاب الوضوء	13
8	كتاب الصلاة	كتاب الصلاة الأول	1	كتاب الصلاة	1	كتاب الصلاة الأول	كتاب الصلاة الأول	1	كتاب الصلاة الأول	6
9	كتاب الصلاة الثاني	كتاب الصلاة الثاني	1	كتاب الصلاة الثاني	1	كتاب الصلاة الثاني	كتاب الصلاة الثاني	1	كتاب الصلاة الثاني	2
10	كتاب الجنائز	كتاب الجنائز	1	كتاب الجنائز	1	كتاب الجنائز	كتاب الجنائز	2	كتاب الصيام	2
11	كتاب الصيام	كتاب الصيام	1	كتاب الصيام	1	كتاب الصيام	كتاب الصيام	2	كتاب الزكاة الأول	3
12	كتاب الاعتكاف	كتاب الاعتكاف	1	كتاب الاعتكاف	1	كتاب الاعتكاف	كتاب الاعتكاف	2	كتاب الزكاة الثاني	3
13	كتاب الزكاة الأول	كتاب الزكاة الأول	1	كتاب الزكاة الأول	1	كتاب الزكاة الأول	كتاب الزكاة	2	كتاب الحج الأول	2
14	كتاب الزكاة الثاني	كتاب الزكاة الثاني	1	كتاب الزكاة الثاني	1	كتاب الزكاة الثاني	كتاب الزكاة الثاني	2	كتاب الحج الثاني	4
15	كتاب الحج الأول	كتاب الحج الأول	1	كتاب الجهاد	1	كتاب الجهاد	كتاب الجهاد	3	كتاب الحج الثالث	1
16	كتاب الحج الثاني	كتاب الحج الثاني	1	كتاب الحج	1	كتاب الصيد	كتاب النذور والأيمان	3	كتاب الصيد	2
17	كتاب الحج الثالث	كتاب الحج الثالث	1	كتاب النذور والأيمان	1	الذبائح	كتاب الصيد	3	كتاب الذبائح	2
18	كتاب الجهاد	كتاب الصيد	2	كتاب الصيد	1	كتاب الضحايا	كتاب الذبائح	3	كتاب الضحايا	2
19	كتاب الصيد	كتاب الذبائح	2	كتاب الذبائح	1	كتاب الأيمان والنذور	كتاب الضحايا	3	كتاب الجهاد	7
20	كتاب الذبائح	كتاب الضحايا	2	كتاب الضحايا	1	كتاب الحج	كتاب النكاح الأول	3	كتاب السلم الأول	2
21	كتاب الضحايا	كتاب الجهاد	2	كتاب الأشربة	1	كتاب النكاح الأول	كتاب النكاح الثاني	3	كتاب النذور	4
22	كتاب النذور الأول	كتاب الأيمان والنذور	2	كتاب العقيقة	1	كتاب النكاح الثاني	كتاب النكاح الثالث	4	كتاب السلم الثاني	1
23	كتاب النذور الثاني	كتاب النكاح الأول	2	كتاب النكاح	1	كتاب النكاح الثالث	كتاب الرضاع	4	كتاب السلم الثالث	2
24	كتاب النكاح الأول	كتاب النكاح الثاني	2	كتاب الرضاع	1	كتاب الرضاع	كتاب إرخاء الستور	4	كتاب الصرف	1
25	كتاب النكاح الثاني	كتاب النكاح الثالث	2	كتاب طلاق السنة	1	كتاب إرخاء الستور	كتاب العدة وطلاق السنة	4	كتاب الآجال	1
26	كتاب النكاح الثالث	كتاب الظهار	2	كتاب إرخاء الستور	1	كتاب طلاق السنة	كتاب الأيمان بالطلاق	4	كتاب البيوع الفاسدة	2
27	كتاب النكاح الرابع	كتاب التخيير والتمليك	2	كتاب الأيمان بالطلاق	1	كتاب الأيمان بالطلاق	كتاب التخيير والتمليك	5	كتاب بيع الخيار	1
28	كتاب النكاح الخامس	كتاب الإيلاء	2	كتاب التخيير والتمليك	1	كتاب التخيير والتمليك	كتاب الظهار	5	كتاب المرابحة	1
29	كتاب النكاح السادس	كتاب اللعان	2	كتاب الظهار	1	كتاب الظهار	كتاب الإيلاء	5	كتاب بيع الغرر والوكالات	1
30	كتاب إرخاء الستور	كتاب الأيمان بالطلاق	2	كتاب الإيلاء	1	كتاب الإيلاء	كتاب اللعان	5	كتاب العرايا	1
31	كتاب التخيير والتمليك	كتاب إرخاء الستور	2	كتاب اللعان	1	كتاب اللعان	كتاب العتق الأول	5	كتاب كراء الرواحل والدواب	1
32	كتاب الرضاع	كتاب العدة وطلاق السنة	2	كتاب الصرف	2	كتاب العتق الأول	كتاب العتق الثاني	5	كتاب التجارة إلى أرض الحرب	2
33	كتاب العدة وطلاق السنة	كتاب الرضاع	2	كتاب السلَم	2	كتاب العتق الثاني	كتاب المدبر	5	كتاب التدليس	2
34	كتاب الأيمان بالطلاق وطلاق المريض	كتاب الاستبراء	2	كتاب بيوع الآجال	2	كتاب المكاتب	كتاب المكاتب	5	كتاب الصلح والجعل والاجارة	2
35	كتاب الظهار	كتاب العتق الأول	2	كتاب البيوع الفاسدة	2	كتاب المدبر	كتاب أمهات الأولاد	5		

A comparison of the kitābs found in five commentaries of the *Mudawwana* and the *kitāb* list of the 1323/1905 Cairo edition

	B	D		G		I	M		O	
	1323/1905 Cairo Edition	**al-Barādhiʿī**		**Ibn Rushd**		**al-Qāḍī ʿIyāḍ**	**al-Rajrājī**		**al-Jubbī**	
36	كتاب الإيلاء واللعان	كتاب العتق الثاني	2	كتاب الغرر	2	كتاب أمهات الأولاد	كتاب الولاء والمواريث	5	كتاب النكاح الأول	2
37	كتاب الاستبراء	كتاب التدبير	2	كتاب بيع الخيار	2	كتاب الولاء والمواريث	كتاب الصرف	6	كتاب النكاح الثاني	1
38	كتاب العتق الأول	كتاب المكاتب	2	كتاب العيوب	2	كتاب السلم الأول	كتاب السلم الأول	6	كتاب النكاح الثالث	1
39	كتاب العتق الثاني	كتاب أمهات الأولاد	2	كتاب المرابحة	2	كتاب السلم الثاني	كتاب السلم الثاني	6	كتاب التخيير والتمليك	1
40	كتاب المكاتب	كتاب الولاء والمواريث	2	كتاب الاستبراء	2	كتاب السلم الثالث	كتاب السلم الثالث	6	كتاب الايلاء واللعان	1
41	كتاب التدبير	كتاب السلم الأول	3	كتاب التجارة إلى أرض الحرب	2	كتاب الصرف	كتاب الآجال	6	كتاب ارخاء الستور	1
42	كتاب أمهات الأولاد	كتاب السلم الثاني	3	كتاب الجعل والإجارة	2	كتاب بيوع الآجال	كتاب البيوع الفاسدة	6	كتاب الرضاع	1
43	كتاب الولاء والمواريث	كتاب السلم الثالث	3	كتاب الرواحل والدواب	2	كتاب البيوع الفاسدة	كتاب بيع الغرر	6	كتاب طلاق السنة	2
44		كتاب الصرف	3	كتاب كراء الدور	2	كتاب بيع الخيار	كتاب بيع الخيار	6	كتاب الاستبراء	1
45	كتاب الصرف	كتاب بيوع الآجال	3	كتاب كراء الأرضين	2	كتاب المرابحة	كتاب المرابحة	7	كتاب الشهادات	2
46	كتاب السلم الأول	كتاب البيوع الفاسدة	3	كتاب تضمين الصناع	2	كتاب الوكالة	كتاب الوكالات	7	كتاب المديان والتفليس	2
47	كتاب السلم الثاني	كتاب بيع الخيار	3	كتاب الأقضية	2	كتاب بيع الغرر	كتاب العرايا	7	كتاب الكفالة والحوالة والغصب	1
48	كتاب السلم الثالث	كتاب المرابحة	3	كتاب الشهادات	2	كتاب العرايا	كتاب التجارة إلى أرض الحرب	7	كتاب حريم الابار	1
49	كتاب الآجال	كتاب الوكالات	3	كتاب حريم الابار	2	كتاب التجارة إلى أرض الحرب	كتاب التدليس بالعيوب	7	كتاب الشفعة والقسم	2
50	كتاب البيوع الفاسدة	كتاب بيع الغرر والملابسة	3	كتاب المديان	2	كتاب الرد بالعيب	كتاب الاستبراء	7	كتاب الوديعة	1
51	كتاب بيع الخيار	كتاب العرايا	3	كتاب التفليس	2	كتاب الاستبراء	كتاب الصلح	7	كتاب الحبس والصدقة	1
52	كتاب بيع الغرر	كتاب التجارة إلى أرض الحرب	3	كتاب المأذون له في التجارة	2	كتاب الصلح	كتاب تضمين الصناع	7	كتاب السرقة والمحاربين	1
53	كتاب بيع المرابحة	كتاب التدليس بالعيوب	3	كتاب الرهون	2	كتاب الجعل والإجارة	كتاب الجعل والإجارة	7	كتاب العتق الأول والثاني والمدبر والمكاتب	1
54	كتاب الوكالات	كتاب الصلح	3	كتاب الكفالة	2	كتاب تضمين الصناع	كتاب المساقاة	7	كتاب أمهات الأولاد	1
55	كتاب العرايا	كتاب الجعل والإجارة	3	كتاب الحوالة	2	كتاب المساقاة	كتاب الجوائح	7	كتاب الولاء والمواريث وكتاب الوصايا الأول والثاني	1
56	كتاب التجارة بأرض العدو	كتاب تضمين الصناع	3	كتاب الحبس والصدقة والهبة	2	كتاب الجوائح	كتاب كراء الرواحل والدواب	7	كتاب الحدود	1
57	كتاب التدليس	كتاب المساقاة	3	كتاب الهبات	2	كتاب القراض	كتاب كراء الدور والأرضين	7	كتاب الأشربة	1
58	كتاب الصلح	كتاب الجوائح	3	كتاب الوديعة	2	كتاب الشركة	كتاب الشركة	8	كتاب الجنايات	1
59	كتاب تضمين الصناع	كتاب كراء الرواحل والدواب	3	كتاب العارية	2	كتاب الرواحل والدواب	كتاب القراض	8	أول (sic) الجراح	2
60	كتاب الجعل والإجارة	كتاب كراء الدور والأرضين	3	كتاب اللقطة	2	كتاب كراء الدور والأرضين	كتاب الأقضية	8	كتاب الجراحات	2
61	كتاب كراء الرواحل والدواب	كتاب القراض	3	كتاب الغصب	2	كتاب الأقضية	كتاب الشهادات	8	كتاب المحاربين والمرتدين والخوارج وكتاب الرجم	1
62	كتاب كراء الدور والأرضين	كتاب الشركة	3	كتاب الاستحقاق	2	كتاب الشهادات	كتاب المديان	8	كتاب الديات	1
63	كتاب المساقاة	كتاب الأقضية	3	كتاب الصلح	2	كتاب الحجر والتفليس والمديان	كتاب التفليس	8	
64	كتاب الجوائح	كتاب الشهادات	3	كتاب العرايا	2	كتاب المأذون له في التجارة	كتاب المأذون له في التجارة	8	*56 kitābs*
65	كتاب الشركة	كتاب المديان	3	كتاب الجوائح	2	كتاب الحمالة والحوالة	كتاب الرهن	8	
66	كتاب القراض	كتاب التفليس	3	كتاب المساقاة	2	كتاب الرهون	كتاب الحمالة	8	
67	كتاب الأقضية	كتاب المأذون له في التجارة	4	كتاب القراض	3	كتاب الغصب	كتاب الحوالة	8	
68	كتاب القضاء	كتاب الحمالة	4	كتاب الشركة	3	كتاب الاستحقاق	كتاب الغصب	8	
69	كتاب الشهادات	كتاب الحوالة	4	كتاب الولايات	3	كتاب الشفعة	كتاب الاستحقاق	9	
70	كتاب الدعوى	كتاب الرهون	4	كتاب الشفعة	3	كتاب القسمة	كتاب الشفعة	9	
71	كتاب المديان	كتاب الغصب	4	كتاب القسمة	3	كتاب الوصايا الأول	كتاب القسمة	9	
72	كتاب التفليس	كتاب الاستحقاق	4	كتاب الوصايا	3	كتاب الوصايا الثاني	كتاب الوديعة	9	
73	كتاب المأذون له في التجارة	كتاب الشفعة	4	كتاب الولاء والمواريث	3	كتاب الحبس والصدقة والهبة	كتاب العارية	9	

A comparison of the kitābs found in five commentaries of the *Mudawwana* and the *kitāb* list of the 1323/1905 Cairo edition

	B	D		G		I	M		O
	1323/1905 Cairo Edition	**al-Barādhiʿī**		**Ibn Rushd**		**al-Qāḍī ʿIyāḍ**	**al-Rajrājī**		**al-Jubbī**
74	كتاب الكفالة والحمالة	كتاب القسم	4	كتاب العتق	3	كتاب العارية	كتاب اللقطة	9	
75	كتاب الحوالة	كتاب الوصايا	4	كتاب المكاتب	3	كتاب الوديعة	كتاب حريم الآبار	9	
76	كتاب الرهن	كتاب الوصايا الثاني	4	كتاب التدبير	3	كتاب اللقطة والضوال والآبق	كتاب الحبس	9	
77	كتاب الغصب	كتاب الوديعة	4	كتاب أمهات الأولاد	3	كتاب حريم الآبار	كتاب الصدقة والهبة	9	
78	كتاب الاستحقاق	كتاب العارية	4	كتاب السرقة	3	كتاب القطع في السرقة والحرابة	كتاب الهبات	9	
79	كتاب الشفعة الأول	كتاب الحبس	4	كتاب المحاربين والمرتدين	3	كتاب القذف والحدود في الزنا	كتاب الوصايا الأول	9	
80	كتاب الشفعة الثاني	كتاب الصدقة	4	كتاب الرجم	3	كتاب الجنايات	كتاب الوصايا الثاني	10	
81	كتاب القسمة الأول	كتاب الهبة	4	كتاب القذف	3	كتاب الأشربة	كتاب القطع في السرقة	10	
82	كتاب القسمة الثاني	كتاب الهبات	4	كتاب الديات	3	كتاب الجراحات والديات	كتاب المحاربين	10	
83	كتاب الوصايا الأول	كتاب اللقطة والضوال	4	كتاب القسامة	3		كتاب الرجم	10	
84	كتاب الوصايا الثاني	كتاب الآبق	4	كتاب الجراحات	3	76 *kitāb*s	كتاب القذف	10	
85	كتاب الهبات	كتاب حريم الآبار	4	كتاب الجنايات	3		كتاب الجراحات	10	
86	كتاب الحبس	كتاب الحدود في الزنا	4	كتاب الجامع	3		كتاب جناية العبيد	10	
87	كتاب الصدقة	كتاب القطع في السرقة	4				كتاب الديات	10	
88	كتاب الهبة	كتاب المحاربين	4	80 *kitāb*s					
89	كتاب الوديعة	كتاب القذف	4				81 *kitāb*s		
90	كتاب العارية	كتاب الأشربة	4						
91	كتاب اللقطة والضوال والآبق	كتاب الجنايات العبد	4						
92	كتاب حريم الآبار	كتاب الجراح	4						
93	كتاب الحدود في الزنا والقذف والأشربة	كتاب الديات	4						
94	كتاب الرجم								
95	كتاب الأشربة	87 *kitāb*s							
96	كتاب السرقة								
97	كتاب المحاربين								
98	كتاب الجراحات								
99	كتاب الجنايات								
	كتاب الديات								
	93 *kitāb*s								

Appendix D

Comparison of Heffening's A, B and ms Leuven B5 added along with the Beirut, Mecca and Abu Dhabi modern editions.

كتاب الوصايا الثاني

1323/1905 edition 6:58 to 6:68; B edition 4:366:21 to 4:374:13; M edition 7:2296:05 to 7:2304:04; AD edition 7:85:10 to 7:99:06

Heffening 92:1				Result*
A			الصبيان	1
B			الصبى	
MS Löwen B5			الصبيان	
Beirut	366:21		الصبي	
Mecca	2296:05		الصبي	
Abu Dhabi	85:10		الصَّبيُّ	
Heffening 92:2				
A			لا يحجون عن ميت اوصى	3
B			لا يحجون عن ميت اوصى بحج	
MS Löwen B5			لا يحجوا عن الميت وان اوصى بحج	
Beirut	366:24		لا يحجون عن ميت أوصى بحج	
Mecca	2296:07		لا يحجون عن ميت أوصى بحج	
Abu Dhabi	85:15		لا يحجُّونَ عَن ميِّت أَوصى بحجٍّ؟	
		The following example is not found in Heffening's study		
1323/1905 Cairo edition			وهل يجوز أن يدفعوا الى عبد أو الى صبىّ أن يحج عن الميت فى قول مالك	
1324/1906-07 Cairo edition			وهل يجوز أن يدفعوا الى عبد أو صبىّ أن ليحج عن الميت فى قول مالك	
Beirut			وهل يجوز أن يدفعوا إلى عبد أوصى ليحج عن الميت فى قول مالك	
Mecca			وهل يجوز أن يدفعوا إلى عبد أوصى ليحج عن الميت فى قول مالك	
Abu Dhabi			وهل يجوز أن يدفعوا إلى عبدٍ أُو صبىٍّ ليحجَّ عنِ الميَّب في قول مالكٍ	
		*This Chart details the discrepancies listed by Heffening in his comparison between Leuven ms B5 and the 1323/1905 Cairo edition and the 1324/1906-07 Cairo edition. Added to Heffening's findings, are the readings for each of the other three modern editions presented in this research, the Beirut, Mecca and Abu Dhabi editions. In the right-hand column is the comparative result for each citation of Heffening's research. The key in the footer of each page explains the result numbers. An equals sign (=) indicates correspondence between the editions/ms cited. The empty set sign (∅) indicates the manuscript or edition cited is unique and does not match any other witness. The key to the editions is as follows: A = 1323/1905 Cairo edition, B = 1324/1906-07 Cairo edition, MS = Leuven ms B5, Beirut = Beirut edition. So, for example, if the result is 1, it means that the 1323/1905 Cairo edition reads the same as the Leuven ms B5 and the 1324/1906-07 Cairo edition reads the same as the Beirut edition.		

Key:1: A=MS; B=Beirut 2: A=B=Beirut; MS=∅ 3: B=Beirut; A=∅; MS=∅ 4: all different 5: A=B; MS =∅; Beirut = ∅

Heffening 92:3			
A		وأرى ان دفعوا ذلك الى عبد او صبى ضمنوا ذلك	4
B		وأرى ان دفعوا ذلك الى عبد او صبى أن يضمنوا ذلك	
MS Löwen B5		وان دفعوا ذلك الى عبد او صبى ضمنوا ذلك فى رأيى	
Beirut	366:27	وأرى إن دفعوا ذلك إلى عبد أوصى أن يضمنوا ذلك*	
Mecca	2296:10	وأرى إن دفعوا ذلك إلى عبد او صبى أن يضمنوا ذلك	
Abu Dhabi	85:19-20	وأرى إن دفعوا ذلك إلى عبد أو صبى أن يضمنوا ذلك	
Heffening 92:4			
A		جاز ذلك	3
B		جاز	
MS Löwen B5		جاز امره ذلك	
Beirut	367:08	جاز	
Mecca	2296:19	جاز	
Abu Dhabi	86:12	جازَ	
Heffening 92:5			
A		فاذا كان هذا له جائزا	1
B		فاذا كان هذا كذلك	
MS Löwen B5		فاذا كان هذا له جائزا	
Beirut	367:09	فإذا كان هذا كذلك	
Mecca	2296:20	فإذا كان هذا كذلك	
Abu Dhabi	86:13	فإذا كان هذا كذلكَ	
Heffening 92:6			
A		ولم يرد الفريضة	2
B		ولم يرد الفريضة	
MS Löwen B5		ولم يرد به فريضة	
Beirut	367:15	ولم يرد الفريضة	
Mecca	2296:25	ولم يرد الفريضة	
Abu Dhabi	86:22	ولم يُرِد الفَريضةَ	

Key:1: A=MS; B=Beirut 2: A=B=Beirut; MS=∅ 3: B=Beirut; A=∅; MS=∅ 4: all different 5: A=B; MS =∅; Beirut = ∅

Heffening 92:7			
A		فابا فلان ان يحج عنه	1
B		فَأَبى ان يحج عنه فلان	
MS Löwen B5		فابا فلان ان يحج عنه	
Beirut	367:16	فَأَبى أَن يحج عنه فلان	
Mecca	2296:26	فَأَبى أَن يحج عنه فلان	
Abu Dhabi	87:01	فَأَبى أَن يحجّ عنه فُلانٌ	
Heffening 92:8			
A		قال وهذا اذا أوصى بحجة تطوع أن يحج عنه رجل يعينه فأبى ذلك الرجل أن يحج عنه ردت الى الورثة	2
B		قال وهذا اذا أوصى بحجة تطوع أن يحج عنه رجل يعينه فأبى ذلك الرجل أن يحج عنه ردت الى الورثة	
MS Löwen B5		قال وهذا اذا اوصى بحجة تطوّع اوصى ان يحج بها عنه رجل بعينه فأبا ذلك الرجل ان يحج عنه ردّ الى الورثة	
Beirut	367:17,18	وهذا إذا أوصى بحجة تطوّع أن يحج عنه رجل يعينه فأبى ذلك الرجل أن يحج عنه ردت إلى الورثة	
Mecca	2296:27,22 97:01	وهذا إذا أوصى بحجة تطوّع أن يحج عنه رجل يعينه فأبى ذلك الرجل أن يحج عنه ردت إلى الورثة	
Abu Dhabi	87:4-5	وهذا إذا أوصى بحجّة تطوّع أن يحجّ عنه رجلٌ بعينهِ فأبى ذلك الرّجلُ أن يحجّ عنه رُدّتْ إلى اَلوَرثةِ.	
Heffening 93:1			
A		سحنون	2
B		سحنون	
MS Löwen B5		missing	
Beirut	367:18	سحنون	
Mecca	2297:02	سحنون [in parentheses, similar to the qāl and qultu references]	
Abu Dhabi	87:06	سحنونُ	
Heffening 93:2			
A		لاقوام بأعيانهم	3
B		لا قوام بعينهم	
MS Löwen B5		لقوم بأعيانهم	
Beirut	367:20	لا قوام بعينهم	
Mecca	2297:04	لا قوام بعينهم	
Abu Dhabi	87:08	لا قوامَ بعينِهم.	

Key:1: A=MS; B=Beirut 2: A=B=Beirut; MS=∅ 3: B=Beirut; A=∅; MS=∅ 4: all different 5: A=B; MS =∅; Beirut = ∅

Heffening 93:3			
A		الاستيناء	2
B		الاستيناء	
MS Löwen B5		الاستثناء	
Beirut	367:24	الإستيناء	
Mecca	2297:07	الاستيناء	
Abu Dhabi	87:13	الاستيناء	
Heffening 93:4			
A		حجة فى وصيته	1
B		فى حجة وصيته	
MS Löwen B5		حجة فى وصيّته	
Beirut	367:25	في حجة وصيته	
Mecca	2297:08	في حجة وصيته	
Abu Dhabi	87:14	في حجّة وصيّته،	
Heffening 93:5		[subject heading]	
A		فى الرجل يوصى	1
B		فيمن اوصى	
MS Löwen B5		فى الرجل يوصى	
Beirut	367:28	فيمن أوصى	
Mecca	2297:12	فيمن أوصى	
Abu Dhabi	87:18	من أوصى	
Heffening 93:6			
A		خذ هذه الدنانير فحج عن فلان على أن علينا ما نقص عن البلاغ، او يقال له	2
B		خذ هذه الدنانير فحج عن فلان على أن علينا ما نقص عن البلاغ، او يقال له	
MS Löwen B5		missing	
Beirut	368:16,17	خذ هذه الدنانير فحج عن فلان على أن علينا ما نقص عن البلاغ، أو يقال له	
Mecca	2298:02	خذ هذه الدنانير فحج عن فلان على أن علينا ما نقص عن البلاغ، أو يقال له	
Abu Dhabi	88:20-21	خُذْ هذه الدَّنانيرَ فحجَّ عن فُلان على أنَّ علينا ما نقصَ عنِ البلاغِ، أو يقال له:	

Key:1: A=MS; B=Beirut 2: A=B=Beirut; MS=∅ 3: B=Beirut; A=∅; MS=∅ 4: all different 5: A=B; MS =∅; Beirut = ∅

Heffening 93:7			
A		ولأن	1
B		ولكن	
MS Löwen B5		ولأن	
Beirut	369:06	ولكن	
Mecca	2298:20	ولكنْ	
Abu Dhabi	89:19	ولَكنَّ	
Heffening 93:8			
A		اعطوا فلانا	2
B		اعطوا فلانا	
MS Löwen B5		اعطوه	
Beirut	369:09	أعطوا فلاناً	
Mecca	2298:23	أعطوا فلانا	
Abu Dhabi	90:01	أعطوا فُلاناً	
Heffening 93:9			
A		قال مالك يبدأ على الورثة	2
B		قال مالك يبدأ على الورثة	
MS Löwen B5		يبدأ على الوصايا	
Beirut	369:17	قال مالك: يبدأ على الورثة	
Mecca	2299:03,04	قال مالك: يبدأ على الورثة	
Abu Dhabi	90:11	قال مالكُ: يبدأُ على الوَرثة	

Heffening 93:10		Überschrift: wie in a in zwei Überschriften zerteilt; der zweite Teil gehört hinter نعم in Zeile 15; textlich entsprechen sie ebenfalls a.	
A		Not quoted in Heffening's article.	
B		Not quoted in Heffening's article.	
MS Löwen B5		Not quoted in Heffening's article.	
Cairo	6:62:12-17 - Lines 12, 15 & 16 are subject heading lines in this edition	فى الرجل يوصى بغلة داره للمساكين (13) قلت أرأيت ان أوصى بغلة داره أو بغلة جنانه للمساكين أيجوز هذا فى قول (14) مالك (قال) قال مالك نعم (15) فى الرجل يوصى بخدنة عبده حياته فيريد (16) أن يديعه من الورثة بنقد أو بدين (17) قلت	
Beirut	369:21-24 - Lines 21 & 22 are subject heading lines in this edition	فيمن أوصى بغلة دار للمساكين وبخدمة عبد (22) حياته فيريد بيعه بنقد أو بدين من الورثة (23) قلت أرأيت إن أوصى بغلة داره أو بغلة جنانه للمساكين، أيجوز هذا في قول (24) مالك؟ قال: نعم. قلت	
Mecca	2299:08-11 - Lines 8 & 9 are subject headings in this edition.	فيمن أوصى بغلة دار للمساكين وبخدمة عبد حياته فيريد بيعه (09) بنقد أو بدين من الورثة (10) (قلت) أرأيت إن أوصى بغلة ذرة (sic) أو بغلة جنانه للمساكين، أيجوز هذا فى قول مالك؟ (11) (قال) نعم. (قلت)	
Abu Dhabi	90:16-19 - Lines 16 & 17 are subject headings in this edition.	من أوصى بغلَّة دار للمساكين وبخدمة (17) عبد حياتَه فيريدُ بيعَه بنقد أو بدين منَ الوَرثة (18) قلت: أرأيتَ إن أوصى بَغلَّة دارِه أو بغلَّة جنانً للمساكِين، (19) أيجوزُ هذا في قولِ مالكٍ؟ قال: نعم.	
Heffening 93:11			
A		حياتى	2
B		حياتى	
MS Löwen B5		حياته	
Beirut	369:24	حياتي	
Mecca	2299:11	حياتى	
Abu Dhabi	90:20	حياتي	

Heffening 93:12			
A		لصاحبه	2
B		لصاحبه	
MS Löwen B5		in the margin with صح] لصاحبه ولا يجوز الجنبى ان يشتريه [	
Beirut	369:26	لصاحبه	
Mecca	2299:13	لصاحبه	
Abu Dhabi	91:01	لصاحبه	
Heffening 93:13			
A		لمشترى	2
B		لمشترى	
MS Löwen B5		لصاحب	
Beirut	370:01	لمشترى	
Mecca	2299:16	لمشترى	
Abu Dhabi	91:05	لمشتري	
Heffening 93:14			
A		ولا اقوم على حفظه عن ملك (This must be a spelling error in Heffening's copy	1
B		ولا احفظه عن مالك	
MS Löwen B5		ولا اقوم على حفظه عن ملك (This must be a spelling error in Heffening's copy	
Beirut	370:04,05	ولا أحفظه عن مالك	
Mecca	2299:19	ولا أحفظه عن مالك	
Abu Dhabi	91:10-11	ولا أحفظُه عن مالك.	
Heffening 93:15			
A		بخدمة العبد	2
B		بخدمة العبد	
MS Löwen B5		missing	
Beirut	370:17	بخدمة العبد	
Mecca	2300:04	بخدمة العبد	
Abu Dhabi	92:07	بخدمة العبد	

Heffening 93:16			
A		بخدمة عبده	3
B		بخدمة العبد	
MS Löwen B5		بالخدمة	
Beirut	370:18	بخدمة العبد	
Mecca	2300:05	بخدمة العبد	
Abu Dhabi	92:08	بخدمة العبد	
Heffening 93:17			
A		ام لا فال نعم قلت وهذا قول ملك فال نعم	1
B		فى قول مالك ام لا قال نعم	
MS Löwen B5		ام لا فال نعم قلت وهذا قول ملك فال نعم	
Beirut	370:23,24	فى قول مالك أم لا؟ قال: نعم.	
Mecca	2300:10,11	فى قول مالك أم لا (قال) نعم	
Abu Dhabi	92:16	في قول مالك أم لا؟ قال : نعم.	
Heffening 94:1			
A		ابن اخى	2
B		ابن اخى	
MS Löwen B5		ابن ابنى	
Beirut	370:25	ثم أنت حر، أو اخدم ابن أخي	
Mecca	2300:12	ثم أنت حرا واخدم ابن أخى*	
Abu Dhabi	92:19	ثمّ أَنتَ حُرَّ، أو اخدمْ ابنَ أَخي	
	*NB: I have extended this quote as a further discrepancy exists just prior to the phrase quoted here by Heffening.		
Heffening 94:2			
A		missing	1
B		والقيام	
MS Löwen B5		missing	
Beirut	370:27	والقيام	
Mecca	2300:13	والقيام	
Abu Dhabi	93:01	والقيامُ	

Key:1: A=MS; B=Beirut 2: A=B=Beirut; MS=∅ 3: B=Beirut; A=∅; MS=∅ 4: all different 5: A=B; MS =∅; Beirut = ∅

Heffening 94:3			
A		خدم ورثة الميت	2
B		خدم ورثة الميت	
MS Löwen B5		خدم الورثة ورثة الميت	
Beirut	371:02	خدم ورثة الميت	
Mecca	2300:17	خدم ورثة الميت	
Abu Dhabi	93:05	خدمَ ورثةَ الميَّتَ	
Heffening 94:4			
A		ولم يؤَخره	1
B		ولم يؤَخر	
MS Löwen B5		ولم يؤَخره	
Beirut	371:04	ولم يؤَخر.	
Mecca	2300:17	ولم يؤَخر	
Abu Dhabi	93:07	ولم يُؤَخَّرْ.	
Heffening 94:5			
A		او قال الابن	2
B		او قال الابن	
MS Löwen B5		وقال	
Beirut	371:09	أو قال الابن	
Mecca	2300:10,11	أو قال الابن	
Abu Dhabi	93:15	أو قال الابنُ	
Heffening 94:6			
A		missing	1
B		لازم	
MS Löwen B5		missing	
Beirut	371:09	لازم	
Mecca	2300:25	لازم	
Abu Dhabi	93:16	لازمُ	

Key:1: A=MS; B=Beirut 2: A=B=Beirut; MS=∅ 3: B=Beirut; A=∅; MS=∅ 4: all different 5: A=B; MS =∅; Beirut = ∅

Heffening 94:7				
A			اشترط لابنه	1
B			اشترط	
MS Löwen B5			اشترط لابنه	
Beirut	371:10		اشترط	
Mecca	2300:25		اشترط	
Abu Dhabi	93:17		اشترطَ	
Heffening 94:8			subject heading	
A			فى الرجل يوصى للرجل	3
B			فيمن اوصى لرجل	
MS Löwen B5			فى الرجل يوصى	
Beirut	371:12		فيمن أوصى لرجل	
Mecca	2301:01		فيمن أوصى لرجل	
Abu Dhabi	94:01		من أوصى لرجلٍ*	
Heffening 94:9			subject heading	
A			فيصالحه	1
B			فصالحه	
MS Löwen B5			فيصالحه	
Beirut	371:13		فصالحه	
Mecca	2301:01		فصالحه	
Abu Dhabi	94:02		فصالحَه	
Heffening 94:10				
A			يسكن الرجل داره	2
B			يسكن الرجل داره	
MS Löwen B5			يسكن الدار رجلا	
Beirut	371:16,17		يسكن الرجل داره	
Mecca	2301:05		يسكن للرجل داره*	
Abu Dhabi	94:06		يُسْكنُ الرَّجلَ دارَه	

Heffening 94:11			
A		لانه لا باس بها	3
B		لانه لا بأس به	
MS Löwen B5		انه لا باس بها	
Beirut	371:21	لأَنه لا بأَس به	
Mecca	2301:10	لأَنه لا بأس به	
Abu Dhabi	94:11	لأَنَّهُ لا بأَسَ به	
Heffening 94:12			
A		قال ابن وهب وابن نافع	3
B		قال ابن وهب	
MS Löwen B5		missing	
Beirut	371:22	قال ابن وهب	
Mecca	2301:10	(قال) ابن وهب	
Abu Dhabi	94:12	قال ابنُ وهب	
Heffening 94:13			
A		قال سحنون	2
B		قال سحنون	
MS Löwen B5		missing	
Beirut	371:22,23	قال سحنون	
Mecca	2301:11	(قال) سحنون	
Abu Dhabi	94:13	قال سحنونُ	
Heffening 94:14		subject heading	
A		فى الرجل بوصى بجنانه لرجل فيثمر الحائط	1
B		فيمن اوصى بحائطه لرجل فاثمرت	
MS Löwen B5		فى الرجل بوصى بجنانه لرجل فيثمر الحائط	
Beirut	371:24	فيمن أَوصى بحائطه لرجل فأَثمرت	
Mecca	2301:13	فيمن أَوصى بحائطه لرجل فأَثمرت	
Abu Dhabi	94:15	من أَوصى بحائطه لرجل فأَثمرتْ	

Heffening 94:15		Heffening is missing a diacritical mark here for the bā in the a and b, but it must be a typo or a bad print	
A		فيوقف مال المدبر	2
B		فيوقف مال المدبر	
MS Löwen B5		فيوقف المدبر	
Beirut	372:07	فيوقف مال المدبر	
Mecca	2301:22	فيوقف مال المدبر	
Abu Dhabi	95:08	فيوقفُ مالُ المُدبِّرِ	
Heffening 94:16			
A		وللعبد	2
B		وللعبد	
MS Löwen B5		او للعبد	
Beirut	372:11	وللعبد	
Mecca	2301:26	وللعبد	
Abu Dhabi	95:12	وللعبد	
Heffening 94:17			
A		مضراً	2
B		مضراً	
MS Löwen B5		يضر	
Beirut	372:18	مضراً	
Mecca	2302:06	مضرا	
Abu Dhabi	96:01	مُضرّاً	
Heffening 94:18			
A		فهى	1
B		فهو	
MS Löwen B5		فهى	
Beirut	372:20	فهو	
Mecca	2302:08	فهو	
Abu Dhabi	96:03	فهو	

Heffening 94:19			
A		من تجارة	2
B		من تجارة	
MS Löwen B5		missing	
Beirut	372:24	من تجارة	
Mecca	2302:12	من تجارة	
Abu Dhabi	96:08	من تجارة	
Heffening 95:1			
A		من تجارة فيه	3
B		من تجارة	
MS Löwen B5		بتجارة	
Beirut	372:25	من تجارة	
Mecca	2302:13	من تجارة	
Abu Dhabi	96:09	من تجارة	
Heffening 95:2*	* There is a word order change in this instance which Heffening does not acknowledge		
A		به من الثلث	1
B		من الثلث بالمال	
MS Löwen B5		به من الثلث	
Beirut	372:28	من الثلث بالمال	
Mecca	2302:16	من الثلث بالمال	
Abu Dhabi	96:13	مِنَ الثُّلث بالمال	
Heffening 95:3			
A		فللموصى له به نصف ذلك	2
B		فللموصى له به نصف ذلك	
MS Löwen B5		missing	
Beirut	373:04	فللموصى له به نصف ذلك	
Mecca	2302:21	فللموصى له به نصف ذلك	
Abu Dhabi	96:19	فللموصى له به نصفُ ذلك	

Key:1: A=MS; B=Beirut 2: A=B=Beirut; MS=∅ 3: B=Beirut; A=∅; MS=∅ 4: all different 5: A=B; MS =∅; Beirut = ∅

Heffening 95:4			
A		للشرك الذى	1
B		للشركة التى	
MS Löwen B5		للشرك الذى	
Beirut	373:05	للشركة التى	
Mecca	2302:23	للشركة التى	
Abu Dhabi	96:20	للشَّركة الَّبي	
Heffening 95:5			
A		الباب	2
B		الباب	
MS Löwen B5		missing	
Beirut	373:06	الباب	
Mecca	2302:23	الباب	
Abu Dhabi	96:21	البابَ	
Heffening 95:6			
A		وهو أعدل أقاويل اصحابنا	5
B		وهو أعدل أقاويل اصحابنا	
MS Löwen B5		missing	
Beirut	373:06,07	هو أعدل أقاويل أصحابنا*	
Mecca	2302:24	وهو أعدل أقاويل اصحابنا	
Abu Dhabi	96:22	هو أعدلُ أقاويل أصحابنا	
	*NB: This is one of two occurrences of discrepancy between Heffening's "B" and the Beirut edition. Note that the discrepancy is merely a conjunction, *wa*.		
Heffening 95:7		subject heading	
A		للمسالكين	2
B		للمساكين	
MS Löwen B5		فى المساكين او السبيل	
Beirut	373:09	للمساكين	
Mecca	2302:26	للمساكين	
Abu Dhabi	97:03	للمساكين	

Heffening 95:8*		* Heffening likely missed the فى in his transcription of the manuscript and a, which is present in both Cairo and Beirut editions.	
A		يدى حتى اموت	1
B		فى يديه حتى يموت	
MS Löwen B5		يدى حتى اموت	
Beirut	373:10,11	في يديه حتى يموت	
Mecca	2302:27-2303:01	فى يديه حتى يموت	
Abu Dhabi	97:05	في يديْه حتّى يموتَ	
Heffening 95:9			
A		من ورثتى	2
B		من ورثتى	
MS Löwen B5		missing	
Beirut	373:11,12	من ورثتي	
Mecca	2303:01,02	من ورثتى	
Abu Dhabi	97:06	من ورثتي	
Heffening 95:10			
A		missing	3
B		من ثلثى	
MS Löwen B5		من ثلثه	
Beirut	373:13,14	من ثلثي	
Mecca	2303:03	من ثلثى	
Abu Dhabi	97:08	من ثُلثي	
Heffening 95:11			
A		ميراثا للورثة	2
B		ميراثا للورثة	
MS Löwen B5		على الورثة ميراث	
Beirut	373:14	ميراثاً للورثة	
Mecca	2303:04	ميراثا للورثة	
Abu Dhabi	97:09	ميراثاً للورثة	

Key:1: A=MS; B=Beirut 2: A=B=Beirut; MS=∅ 3: B=Beirut; A=∅; MS=∅ 4: all different 5: A=B; MS =∅; Beirut = ∅

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Heffening 95:12			
A		يوصى للرجل	1
B		اوصى لرجل	
MS Löwen B5		يوصى للرجل	
Beirut	373:25	أوصى لرجل	
Mecca	2303:15	أوصى لرجل	
Abu Dhabi	98:02	أوصى لرجل	
Heffening 95:13			
A		وصيته	1
B		وصية	
MS Löwen B5		وصيته	
Beirut	374:03	وصية	
Mecca	2303:22	وصية	
Abu Dhabi	98:12	وصيةً	
	A discrepancy in the modern editions but not given by Heffening.		
Cairo	"6:68:12"	قلت	
Beirut	374:07	قال	
Mecca	2303:26	قلت	
Abu Dhabi	98:18	قلت	
Heffening 95:14			
A		كانت	2
B		كانت	
MS Löwen B5		كان	
Beirut	374:08	كانت	
Mecca	2303:26	كانت	
Abu Dhabi	98:18	كانت	
Heffening 95:15			
A		الاولى	2
B		الاولى	
MS Löwen B5		الاول	
Beirut	374:09	الأولى	
Mecca	2303:27	الأولى	
Abu Dhabi	98:20	الأُولى	

Key:1: A=MS; B=Beirut 2: A=B=Beirut; MS=∅ 3: B=Beirut; A=∅; MS=∅ 4: all different 5: A=B; MS =∅; Beirut = ∅

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Heffening 95:16			
A		بالذى هو اكثر	1
B		بلاكثر	
MS Löwen B5		بالذى هو اكثر	
Beirut	374:10	بالأكثر	
Mecca	2304:02	بالأكثر	
Abu Dhabi	99:01	بالأكثر	
Heffening 95:17			
A		عليها قال ابن القاسم	2
B		عليها قال ابن القاسم	
MS Löwen B5		missing	
Beirut	374:13	عليها. قال ابن القاسم	
Mecca	2304:04	عليها (قال ابن القاسم)	
Abu Dhabi	99:05-06	عليها. ٢١١٠٣ – قال ابنُ القاسم	

Key:1: A=MS; B=Beirut 2: A=B=Beirut; MS=∅ 3: B=Beirut; A=∅; MS=∅ 4: all different 5: A=B; MS =∅; Beirut = ∅

A comparison of CBL ms Ar 5835:59b with the four modern editions of the Mudawwana								
CBL ms Ar 4835:59b		**1323/1905 Cairo edition 4:189**		**1994 Beirut edition 3:223-224**		**1999 Mecca edition 5:1498-1499**		**2005 Abu Dhabi edition 4:566-567**		**Observations**
line number	text	line number	text	line number	text	line number	text	line number	text	
2، right margin	البائع	3	البائع	223:18	البائع	1498:14	البائع	566:10	البائع	An editorial addition by the copyist upon noticing the word was originally missed in the copy
2		3	بالله	19	بالله	1498:14	بالله	566:10	بالله	Was this a later addition to strengthen the text/concept by adding *Allāh*? Or could the removing of *Allāh* have taken place?
3		4		21	قال سحنون: وأخبرني ابن وهب	1498:15-16	قال سحنون: وأخبرني ابن وهب	566:12	قال سحنون: وأخبرني ابن وهبٍ	The Beirut edition attributes this section to Ibn Wahb. This would have likely been added by a transmitter at some point.
3 - 4	سفين الثوري	4	سفيان	21	سفيان	1498:16	سفيان	566:12	سفيان	Was the CBL ms copied in a geographic region where Sufyān (note the spelling with out the *alif* which appears to be consistent within the manuscript with many names, e.g. Malik rather than Mālik) was not known well enough and had to be specified?
4	البيعان	5	البيعان	22	البائعان	1498:17	البائعان	566:13	البائعان	
5	وليس	5	وليست	22	وليس	1498:17	وليس	566:13	وليس	
6 - 7	الخيار في الصرف والتسليف	7	الخيار في الصرف	24	الخيار في الصرف	1499:01	الخيار في الصرف	566:16	الخيار في الصرف	The subject heading - most intriguing that the CBL ms would have a different written tradition. This supports a late addition of the subject headings and that the subject headings were likely developed independent of the development of the text.
8	قلت ارايت هل يجيز ملك	8	قلت لابن القاسم هل يجوّز مالك	25	قلت: أرأيت هل يجيز مالك	1499:02	قلت: أرأيت هل يجيز مالك	566:17	قلت: أرأيت هل يجيز مالك	Why would the ms of the Cairo edition have added the name of Ibn al-Qāsim here? Also note the dropping of the word specifically referencing his opinion
9	اليوم واليومين	9	يوما أو يومين	26	اليوم واليومين	1499:03	اليوم واليومين	566:19	اليوم واليومين	Simply another formula to say something of virtually the same content.
11	يفترقا	11	بتفرقا	224:01	يفترقا	1499:04	يفترقا	567:01	يفترقا	Although the two forms appear different, there is little difference between the two parties becoming separated or separating themselves in reality. The significance of the discrepancy seems to be more with the particular edition, namely the Cairo edition.

A comparison of CBL ms Ar 5835:59b with the four modern editions of the Mudawwana

CBL ms Ar 4835:59b		1323/1905 Cairo edition 4:189		1994 Beirut edition 3:223-224		1999 Mecca edition 5:1498-1499		2005 Abu Dhabi edition 4:566-567		Observations
line number	text	line number	text	line number	text	line number	text	line number	text	
14	ان	13	اذا	4	أن	1499:06	أن	567:04	أن	Although of the same essential meaning, what would induce this word change and when? at the time of *samāʿ* by the individual listener?
14 - 15	احدهما بالخيار وابطل خياره قبل	13	أحدهما بالخيار قبل	4	أحدهما بالخيار وأبطل خياره قبل	1499:07	أحدهما بالخيار وأبطل خياره قبل	567:04-05	أحدهما بالخيار وأبطل خياره قبل	Can the difference in the Cairo edition be attributed to a poor copyist who just forgot this important phrase?
15	⊙	14		5		1499:07	،	567:05		This common punctuation form in the CBL Ar ms 4835 is found in other manuscripts of the same time period. It signifies a full stop. Interestingly, neither of the modern editions include a full stop here, in spite of the fact that at least the B edition often has much more punctuation than the manuscript.
17	بدنانير	15	بدنانير	6	بدينار	1499:09	بدنيار	567:07	بدينار	A certain gold coin, (meaning of دينار) with دنانير being the plural of دينار. Why would the editor of the Beirut edition choose the singular when the plural of درهام was used just prior? The discrepancy in the Mecca edition is likely simply an editorial oversight of a typographical error.
18	ولا يجوز في الصرف	16	ولا يجوز الخيار في الصرف	7	ولا يجوز الخيار في الصرف	1499:11-12	ولا يجوز الخيار في الصرف	567:08-09	ولا يجوز الخير في الصرف	Was the addition of الخير simply a clarification? Or did it drop as a result of a poor copyist in one tradition?
20	بين واحد منهما وبين صاحبه	18	بين واحد وبين صاحبه	8 - 9	بين واحد منهما وبين صاحبه	1499:13	بين واحد منهما وبين صاحبه	567:11	بين واحد منهما وبين صاحبه	Although the absence of the word منهما does not significantly change the meaning, does this provide further evidence that the 1323/1905 Cairo edition typesetter/proofer or a previous copyist of the manuscript in previous generation manuscripts, was poor at his job?
20	سحنون	18	قال سحنون	10	قال سحنون	1499:13	قال سحنون	567:12	قال سحنون	A tired copyist might have looked at عمل and confused it with the قال following it believing he had already written that word. The absence of قال does not significantly change the meaning, as it is clearly implied by the context, however, it is unusual that it would be missing.

Discrepancies between the 1323/1905 Cairo edition and the Beirut edition for selected passage in *Kitāb al-Qisma al-thānī*

1323/1905 Cairo edition (5:517:12 - 5:518:10)	line #	Beirut edition (4:309:6 - 4:310:1)	line #	Remarks
فى الرجلين	12	ما جاء في الرجلين	6	Subject heading: incidental discrepancy. No significant shift in meaning.
وأعطى صاحبه طائفة على	15 - 14	وأعطى طائفة صاحبه، على	8 - 9	word order inversion of two words: incidental discrepancy; 1323/1905 Cairo edition preferred reading. No shift in meaning.
وكيف ان لم	16	وكيف لم	10	The presumed word present in the 1323/1905 edition and absent in the Beirut edition here is أن (that) and not إن (if). In which case the discrepancy is incidental. The inclusion of the word إن here would not not make sense. 1323/1905 Cairo edition preferred reading.
يعطيه أجلا اذا لم يكن بعينه	16	يعطيه إذا لم يكن بعينه أجلاً؟	10	1323/1905 Cairo edition reading is preferred here as the word order in that edition implies that "later" (*ajal*) modifies when it is given, whereas in the Beirut edition reading the meaning is that "later" (*ajal*) modifies specified. However it would need to be specified sooner, rather than later, and needs to be given later.
وكذلك ان اقتسما فيما	20	وكذلك إن اقتسامها فيما	14	Here the third person feminine accussative pronoun is added to the verb, making reference to the property (*dār*); incidental discrepancy. No shift in meaning.
بين القوم فيكون	1	بين قوم فيكون	18 - 17	The 1323/1905 Cairo edition has the definite article added to the tribe: incidental discrepancy. No shift in meaning.
ما لا ينتفع به يقسم بينهم	2 - 3	ما لا ينتفع به قسم بينهم،	19	The difference is in the tense of the verb, perfect (completed) in the Beirut edition or imperfect (still in the present or incomplete stage) in the 1323/1905 Cairo edition: incidental discrepancy in this context. No preferred reading. No significant shift in meaning.
لان الله تبارك وتعالى قال	3	لأن الله تعالى قال	19	An additional word is present in the honorific phrase of the 1323/1905 Cairo edition: incidental discrepancy. Although meaning is added with the 1323/1905 Cairo reading, throughout the centuries transmitters could easily have added to these honorific phrases, being affected by cultural and temporal influences and practices which result in no significant shift in the meaning of the text. Although the textual meaning changes with the addition of the word, the function of the honorific title is not any different with the addition of this word.
مما قل منه أو كثر نصيبامفروضا	3	مما قل منه أو أَكثر نصيباً مفروضاً	20	This must be a typographical, unintentional error in the Beirut edition as it is a Qurʾānic quotation. It would be very interesting to see the source manuscript that was used for this text. Could this possibly be an indication of sloppy editorial work on the part of the modern editor, or was it an error original to the 1324/1906-07 edition of which it is believed this edition is a re-print?
وشركتهم من ميراث أو شراء وأبى بقيتهم القسمة	6	وشركتهم من شراء أو ميراث فأبى بقيتهم القسمة؟	22 - 23	Two differences are noted here, the inversion of the inheritance (*mīrāth*) and purchase (*shirā*); incidental discrepancy with no shift in meaning. Additionally, the conjunction in the two editions differs, the 1323/1905 edition reading *wa* and the Beirut edition reading *fa*. No significant shift in meaning.
يباع عليه وعليهم جميع ذلك	9	يباع عليهم، وعليه جميع ذلك	26	Here it seems the Beirut edition is the preferred meaning, as the plural pronoun on the preposition would here seem to refer to the parties involved in the division. Following that, the conjunction shifts the subject towards all of them (*jamīʿ*; female, singular) calling for a feminine singular pronoun.
بما يعطون به	10	بما يعطون فيه	1	Difference in preposition here, between *fī* and *bi*. No shift in meaning and no preferred reading.

Subject headings from

Kitāb al-Qisma al-awwal and *al-thānī*
of *al-Mudawwana al-kubra*[1]

Arabic original and translated English

Beirut edition, Vol. 4, page number	English translation	Arabic Original
	Kitāb al-Qisma al-awwal	
265	Concerning the sale of inheritances	ما جاء في بيع الميراث
265	Concerning the apportionment of benefits of divisions	ما جاء في التهائ في القسم
266	Concerning the purchase of a passgeway and the division of house, to whom does the way belong	ما جاء في شراء الممر وقسوة الدار على أن الظريق على أحدهم
266	Concerning the division of a house and one of them is ignorant of his fortune	ما جاء في قسمة الدار وأحدهما يجهل حظّه
266	The division of villages/populated areas	قسمة القرى
267	The division of the houses between various people	قسم الدور بين ناس شتى
267	On the division of a village which has houses and trees [much longer section than most]	في قسمة قرية فيها دور وشجر

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1. Subject headings are taken from the 1994 Beirut edition of the *Mudawwana.*

268	Concerning the division of fruit (dates, grapes, wheat) mandouj that will give you something.	ما جاء في قسمة الثمار
269	Concerning the division of herbs	ما جاء في قسمة البقل
270	Concerning the division of land and its water and its trees	ما جاء في قسمة الأرض ومائها وشجرها
270	Concerning the division of green seeds before they are useful	ما جاء في قسمة الزرع الأخضر قبل أن يبدو سلاحه
271	Concerning the division of dates (different forms) from date trees	ما جاء في قسمة البلح الكبير والبسر والرطب في رؤوس النخل
273	Concerning the division of slaves	ما جاء في قسمة العبيد
273	Concerning the division of yoghurt in the udders and wool on the backs of sheep	ما جاء في قسم اللبن في الضروع والصوف على ظهور الغنم
273	On the division of [a trunk of a date tree which has the head cut off and is dry/an animal which has reached maturity], and [the leaves of a door/door panels], slippers, sandals and clothing	في قسمة الجذع والمصراعين والجفين والنعلين والثياب
274	On the divison of cheese and food	في قسمة الجبنة والطعام
274	On the division of land and springs	في قسمة الأرض والعيون
275	On the sale of date trees by date trees and it has fruit on it which is either flowering or not	في بيع النجل بالنخل وفيها ثمر قد أزهى أو لم يزه
276	Concerning the division of the produce with the tree	ما جاء في قسمة الثمر مع الشجر
276	Concerning the division of fruit	ما جاء في قسمة الفواكه
277	Concerning the division of the family of the inheritance and then one of them claims the error	ما جاء في قسمة أهل الميراث ثم يدّعي أحدهما الغلط

278	Concerning two men who divide the house and one of them claims the house after the division	ما جاء في الرجلين يقتسمان الدار فيدّعي أحدهما بيتاً بعد القسم
278	Concerning differences in the limits of the boundary (boundary lines)	ما جاء في الاختلاف في حد القسمة
279	On the division of guardianship over finances of minors	في قسمة الوصي مال الصغار
279	On the bequeathing of a Muslim to a *dhimmi* and it/he divides a course of water	في المسلم إذا أوصى إالى الذمي وقسمه مجرى الماء
280	A man who has a date tree on the property of another man, he uprooted it and wanted to plant it somewhere else	الرجل تكون له النخلة في أرض رجل أقلعت فأراد أن يغرس مكانها غيرها
282	When an heir dies shortly after inheriting but the inheritance has already been divided	في الوارث يلحق بالميت بعد قسمة الميراث
283	When an heir adopts religion after division has taken place	في إقرار الواوث بالديْن بعد القسمة
284	When the will (testament) inflicts the deceased after the division	في الوصية تلحق الميت بعد القسمة
285	On the property judge dividing for an absentee	في قسم القاضي العقار على الغائب
286	Concerning the division of land and trees of an intersection	ما جاء في قسمة الأرض والشجر المفترقة
286	Concerning the division that is not divided	ما جاء في قسمة ما لا ينقسم
286	What is collected in the division of cloth and livestock	ما يجمع في القسمة من البز والماشية
287	Concerning the division of bracelets and jewels	ما جاء في قسمة الحلي والجوهر

287	Concerning the division of land and green seeds	ما جاء في قسمة الأرض والزرع الأخضر
289	Concerning the division of an inheritance which is unknown	ما جاء في قسمة المواريث على غير رؤية
289	Concerning the division involving options (to be contemplated and decided upon over a period of time)	ما جاء في القسمة على الخيار
289	Concerning the division of a father or guardian to his son (minor) and the giving to him of his money/share	في قسمة الأب أو وصيّه على ابنه الصغير وهبته ماله
290	Concerning the guardian of the mother and his share	ما جاء في وصي الأم ومقاسمته
291	Concerning the division of an unbeliever regarding his daughters who have reached the age of majority	ما جاء في قسمة الكافر على ابنته البالغ
292	On the division of the mother or the father for/towards/regarding absent adult children and the sharing of the mother toward her son	في قسمة الأم أو الأب على الكبار الغيب ومقاسمة الأم على ولدها
292	On the division of the guardian of a foundling to the foundling	في قسمة وصي اللقيط للقيط
292	Concerning the judgement of a man concerning the capital of his wife	ما جاء في قضاء الرجل في مال امرأته
	Kitāb al-Qisma al-thānī	
294	Concerning the partners who make a division and one of them discovers a fault with his share or between them	ما جاء في الشريكين يقتسمان فيجد أحدهما بحصته عيباً أو ببعضها
295	Concerning the grain which is divided and one of them finds a fault with the grain	ما جاء في الحنطة يقتسمانها فيجد أحدهما بحنطة عيباً
296	On the man who buys a slave to which he is entitled	في الرجل يشتري عبداً فيستحق

299	Concerning the replevin[2] of part of the transaction	ما جاء في استحقاق بعض الصفقة
300	Concerning the division of sheep according to their value between two men	ما جاء في قسمة الغنم بين الرجلين بالقيمة
300	Concerning the division of wheat and coin (*dirham*s, lit. silver) between two men	ما جاء في قسمة الحنطة والدراهم بين الرجلين
301	Concerning the people have divided amongst themselves a house and one of them is entitled to a portion, and the house has been built	ما جاء في القوم يقتسمون الدور فتستحق حصة أحدهم وقد بنى
302	On the division of many houses and one person is entitled to some of them	في قسمة الدور الكثيرة يستحق بعضها من يد أحدهما
304	For a man who entrusts one-third of his estate to another man who takes in his entrusting a third of the houses which he deserves "from his hand" after they have been built	في الرجل يوصي للرجل بثلث ماله فيأخذ في وصيته ثلث دار فيستحق من يده بعد البناء
305	Concerning the renunciation between the two men and the courtyards of the houses/courts of the houses/vacant lots are not divided	ما جاء في النقض يكون بين الرجلين والعرصة ليست لهما فيقتسمانه
306	Concerning the division of the roads and the walls	ما جاء في قسمة الطريق والجدار
307	Concerning the division of bath houses, and wells and cisterns and springs	ما جاء في قسمة الحمام والآبار والمواجل والعيون
307	Concerning the division of date and olive trees	ما جاء في قسمة النخلة والزيتونة

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2. replevin: noun, Law - a procedure whereby seized goods may be provisionally restored to their owner pending the outcome of an action to determine the rights of the parties concerned

308	Concerning the division of a small piece of property or a shop between joint owners	ما جاء في قسمة الأرض القليلة والدكان بين الشركاء
309	ConcernUing two men who divide the wall into two parts to which one of them adds for the other money or liquid assets or for a deferment	ما جاء في الرجلين يقتسمان الجدار على أن يزيد أحدهما صاحبه دنانير أو سلعة نقداً أو إلى أجل
310	Who is responsible for the provision of the judgment, the workers and the division?	ما جاء في أرزاق القضاة والعمال وأجر القسام على من هو؟
310	Who takes care of the healthy and the sick and the sick manumitted slave?	فيمن دبر في الصحة والمرض والعتق في المرض
311	Concerning the division of the house by measurements by casting lots	ما جاء في قسمة الدار بالأذرع على السهام
312	Concerning the division of houses and courtyards and courtyard enclosures	ما جاء في قسمة الدور والساحة والمرفق بالساحة
312	On the division of houses and rooms and roof terraces	في قسمة البيوت والغرف والسطوح
314	For one who wants a vacant lot to become a bathhouse or a bakery or a mill	فيمن أراد يحدث في أرضه حماماً أو فرناً أو رحى
314	On the division of a house and a slave if they are of one value together	في قسمة الدور والرقيق أذا كانت القيمة واحدة
315	If a man wants to install a door which open into an alleyway or into a deadend alley	في الرجل يريد أن يفتح باباً في زقاق نافذ أو غير نافذ
317	On dividing a hidden/concealed house and dividing the entrustment of large and small concealments	في قسم الدار الغائبة وقسم الوصي على الكبير الغائب والصغار
319	Concerning the differences of the heirs in the division of the properties if the result is worse than casting lots for each house.	ما جاء في اختلاف الورثة في قسمة الدورأذا أرادوا أن يجعلوا سهامهم في كل دار

Text of the *Mudawwana* from *Kitāb al-Qisma al-thānī*

ما[1] جاء في[2] الرجلين يقتسمان الجدار على أن يزيد أحدهما صاحبه دنانير أو سلعة نقداً أو إلى أجل

قلت: أرأيت لو أن داراً بين رجلين اقتسماها فيما بينهما،

فأخذ هذا طائفة

وأعطى طائفة صاحبه،[3]

على أن أعطى أحدهما صابه عبداً

أو أعطاه دراهم

أو عروضاً نقداً

أو إلى أجل،

وكيف[4] لم يضرب للذي يعطيه[5] إذا لم يكن بعينه أجلاً[6]؟

قال : ذلك جائز

إذا كان بعينه،

وإن كان ديْناً موصوفاً فلا يصلح إلّا أن يضرب لذلك أجلاً،

يجوز من هذا

ما يجوز في البيع

ويفسد من هذا

ما يفسد في البيع.

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1. The text is taken from the Beirut edition of the *Mudawwana* with footnotes indicating discrepancies with the 1323/1905 Cairo edition.

2. In the place of ما جاء في the 1323/1905 Cairo edition reads simply في.

3. In the 1323/1905 Cairo edition, these two words are inverted, reading صاحبه طائفة.

4. The 1323/1905 Cairo edition adds here ان.

5. In the 1323/1905 Cairo edition, inserted here is the word أجلا.

6. أجلاً does not appear here in the 1323/1905 Cairo edition.

قال : وهذا رأيي

لأن مالكاً قال :

لا بأس

أن يأخذ أحدهما طائفة من الدار

والاخر طائفة من الدار

على أن يزيد أحدهما صاحبه دنانير.

قلت : وكذلك إن اقتسماها[7] فيما بينهما

فأخذ هذا طائفة

وهذا طائفة،

على أن يتصدق أحدهما على صاحبه بصدقة معروفة

أو يهب له هبة معروفة؟

قال :

قال مالك : ذلك جائز.

قلت : فلو اشترى رجل من رجل ممره في داره من غير أن يشتري من رقبة الدار شيئاً، أيجوز ذلك؟

قال : ذلك جائز عند مالك.

قلت : ما قول مالك في البيت الصغير يكون بين قوم[8] فيكون في نصيب أحدهم ما لا ينتفع به إذا قسم أيقسم أم لا؟

قال:

قال مالك : يقسم

وإن كان في نصيب أحدهم ما لا ينتفع به قسم[9] بينهم،

لأن الله تعالى[10] قال في كتابه:

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7. This word in the 1323/1905 Cairo edition reads simply اقتسما.

8. This word in the 1323/1905 Cairo edition reads القوم.

9. In the 1323/1905 Cairo edition this reads يقسم.

10. In the 1323/1905 Cairo edition this honorific phrase reads تبارك وتعالى.

﴾مما قل منه أو أكثر[11] نصيباً مفروضاً﴾ (سورة النساء:٧)[12]

فالقليل النصيب في هذا

والكثير النصيب في هذا سواء،

يقسم عليهم إذا طلبوا القسمة ولا يلتفت إلى قليل النصيب ولا إلى كثير النصيب.

قلت: فإذا دعا واحد من الشركاء إلى القسمة ـ وشركتهم من شراء أو ميراث[13] ـ فأبى[14] بقيتهم القسمة؟

قال:

قال مالك:

من دعا منهم إلى القسمة

وكان ما في أيديهم

مما يقسم قسم

من رقيق

أو دواب

أو غير ذلك.

قال لي مالك:

كان ذلك من شراء أو ميراث فإنه يقسم،[15]

وإن كان مما لا ينقسم

وقال أحدهم:

أنا لا أبيع وقال بقيتهم نحن نبيع.

قال:

يباع عليهم،

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11. The 1323/1905 Cairo edition reads here كثر which agrees with the Qurʾān.

12. The reference for this *aya* in the Qurʾān is not given in the 1323/1905 Cairo edition.

13. This phrase is inverted in the 1323/1905 Cairo edition to read ميراث أو شراء .

14. The 1323/1905 Cairo edition reads here وأبى.

15. The 1323/1905 Cairo edition has (unusually) here a full stop.

وعليه[16] جميع ذلك

على ما أحبوا أو كرهوا

إلا أن يريد الذين كرهوا البيع

أن يأخذوا ذلك

بما يعطون فيه[17]

فيكون ذلك لهم.

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16. The 1323/1905 Cairo edition inverts these prepositional phrases here, reading يباع عليه وعليهم.

17. The 1323/1905 Cairo edition reads here به.