The Light of Lights on the Commentary of Al-Manaar

Volume I

Author: Imaam Ahmad Mulla Jeewan al-Hanafi

Translator: Mufti Muhammad Huzaifah ibn Adam aal-Ebrahim

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Noor-ul-Anwaar fee Sharh-il-Manaar

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القسم الأول من التقسيم الأول

Part One, from Section One:

الخاص

Al-Khaas (Specific)

تعريفه

1. The Definition of Khaas (the Specific):

أما الخاص: فكل لفظ وضع لمعنى معلوـ على الإنفراد

"Khaas refers to any such word which has one, specific, known meaning."

وقوله: "كل لفظ بمنزلة الجنس (شامل) <كل ألفاظ>, والباقي كالفصل

"The statement of the author: "Every word", is in the position of jins (species, or specifying a species), and encompasses the meaning of "all (such) words." The rest are separate.

By him saying: "used for a specific meaning," meaningless (words or speech) is excluded.

وقوله: "معنى" إن كان معناه: <معلوم المراد> يخرج منه المشترک لأنه غير معلوم المراد

With regards to his saying: "known", if what he means by it is "its intended meaning is known", then all words possessing more than one possible meaning is excluded, because when it comes to such words (having multiple meanings), the intended meaning is not (always) known.
If what he means by it is that the explanation is known, then this would not exclude words possessing multiple meanings; however, words possessing multiple means would still be excluded on account of what he says next, which is على الإنفراد, i.e. having just one meaning, because what he means by that is, for a word to be *kbaas* it must be alone in its meaning. It must possess just one meaning and be free from any other meaning. Thus, with that, general (non-specific) words and words possessing multiple meanings are all excluded.

He used the word *lafzh* instead of *nazhm*, proceeding thereby according to the default, and because the apparent is that these parts are not exclusive to the book but rather, they appear in all the words of the Arabs. He only mentioned *nazhm* in the divisions out of consideration for al-Adab (the science of Arabic literature), because the word *nazhm* actually means to tread pearls on a string, opposite to the word *lafhz*, which, linguistically, means to throw.

He used the word *kull* (every), which, though it is disliked in definitions in the terminology of the people of *mantiq* (the logicians), but here, the purpose of its usage to give exactness, i.e., to apply the principle in entirety, with all of its parts, without exiting from it, and this is only achieved by using the word *kullu*.
2. The Forms of *Khaas*

The author says: "*Khaas* is either: specifying a species, or specifying a type, or specifying an individual.”

This is a segment on *khaas* after explaining its definition.

What this means is that, the specification which is understood from *khaas* is either specification of a species, which is by, for example, its species being specific or exclusive in terms of meaning even if it can apply to more than that; or, specification of a class - again, same as the above; or specification of a specific individual, and this is the more specific or exclusive kind of *khaas*.

The word *jins*, according to them (i.e. according to the `Ulamaa of Usool, contrary to the Logicians) is a comprehensive term used for many that are different in terms of objectives/purposes/designs/aims, not realities, as is the view of the Logicians.

The word *naus*, according to them (again, according to the *Usooliyyeen*, or `Ulamaa of Usool) is a comprehensive term used for many that are the same in terms of objectives/purposes/designs/aims not realities, as is the view of the Logicians.
Because they (i.e. the Usooliyyoon) search for the objectives/purposes rather than the realities, so many a times, something that is considered a nauw’ by the Logicians in considered a jins by the Fuqahaa, as is apparent in the examples mentioned by him, which are: insaan (a human being, as an example of jins), a man (as an example of nauw’), and Zaid (as an example of an individual).

ف>الإنسان> نظير خاص الجنس فإنه مقول على كثيرين مختلفين بالأغراض فإن تحته رجلاً وامرأة، والغرض من خلقة الرجل هو كونه نبياً وإماماً وشاهداً في الحدود والقصاص ومقيماً للجمعة والأعياد ونحوه، والغرض من المرأة كونها مستفرشة أثية بالولد مدبرة لحوائج البيت وغير ذلك. و>الرجل> نظير خاص النوع فإنه مقول على كثيرين متفرقين بالأغراض فإن أفراد الرجال كلهم سواء في الغرض، و>زيد> نظير خاص العين فإنه شهيد معين لا يمكن الشريك إلا بتعدد الأوضاع.

So, "insaan" (human being) is an example of specification of a species, because it is a (comprehensive) term used for that which is many but differing in design/purpose/objectives, because under this (species) you get man and you get woman, and the aim and object of the physical constitution of a man is that he can be a Nabi, or an Imam, or a witness when it comes to hudood (punishments stipulated by the Sharee`ah), or qisas (retribution), and he can establish Jumu`ah, and the Eids, etc. On the other hand, the aim and object of the physical constitution of the woman is that she is able to be child-bearing, supervising the needs and affairs of the household, etc.

"Man" is an example of specification of a type, because it is a (comprehensive) term used for that which is many and the same in terms of the aim and object, or purpose, because though there may be many men, all of them are the same in terms of the purpose/design/aim and object.

"Zaid" is an example of a specification of an individual (or class), because he is an individual person, and there is no possibility of association or partnership, except if there is more than one (i.e. person called Zaid).
3. The Ruling of *Khaas*

After the author finished defining *khaas* and dividing it up, he now begins explaining what is its ruling, so he says:

"Its ruling is that it deals specifically with that which is has been specified."

In other words, its effect is that it deals with or discusses only that which has been specified, only the very thing (i.e. species, or type, or individual) that has been specified, in such a manner that the possibility of anything else or anyone else being referred to is absolutely removed (i.e. when a person says “man”, this is specifying a class, and the ruling and effect of this is that, it is now understood that only “man” is being referred to, and anything else, whether it be women, or plants, or animals, or anything else, is completely excluded, and the discussion, subject matter and attention is drawn solely to this *naam* (type) which has been specified, which is “man”.)

So when we say, "Zaid is an `Aalim." Zaid is specific; there is no possibility of anyone other than Zaid being meant, for such a possibility would not arise from any evidence. The term `Aalim, also, is *khaas* (specific); nothing other than any `Aalim is meant (also, no one other than an `Aalim is meant.) Each of two words deals with their respective purport is a way that is absolute, having no room for the possibility of "other", and thus from the speech itself it is established that the label of "`Aalim" can be applied to Zaid, in an absolute way, by this means.
The author says: "(Khaas) has no possibility (or need) of explanation or clarification, because in and of itself it is already clear."

This is another ruling which strengthens the first ruling, and it would appear as though both are the same; however, the first is to explain the teaching (or where it is coming from), and the second is to dispel the word of any opponent, and also, to prepare the way for the forthcoming issues branching off (from this).

What he (the author) means is that khaas does not need tafseer (explanation or clarification) because it is already clear. This is the opposite of mujmal (concise), because that which is mujmal stands in need of clarification and elucidation.

As for the clarifications of taqreer (determining) and taghyeer (altering), then khaas has a possibility for this because it does not negate its "absolute" status, because the clarification given by taqreer (determining; fixing) removes
any possibility that may arise without evidence, and so it becomes *muhkam* (clear), as it is said: "Zaid came to me - Zaid."

As for the clarification given by *taghyeer* (altering), then all speech carries a possibility for it, whether it is absolute or assumed, as it is said: “You are divorced if you enter the house.” Similarly, *khaas* bears the possibility for the clarification of *tabdeel* (substituting).

The author says: “For this reason, it is not permissible to attach *ta`deel* (i.e. *ta`deel al-arkaan*, which is to carry out the postures of Salaah with calmness and composure, with balance, not rushing) to the commands of *rukoo*` and *sujood*, by saying it (*ta`deel*) is *fardh* (compulsory).”

Here, the author begins to discuss those issues which branch off (from what was explained earlier), in which there are differences of opinion between us and (Imaam) ash-Shaafi`ee, with regards to the ruling of *khaas*.

Meaning, since *khaas* cannot get an explanation attached it to it because it is already clear in and of itself, then based on this, it is not permissible to attach *ta`deel-ul-arkaan* - which refers to having calmness and composure during *rukoo*`, *sujood*, *qowmah* (standing after *rukoo`*), and sitting between the two *sajdahs* - to the order of performing *rukoo`* and *sajdah*, because Allaah Ta`alaaa says:

{"And perform rukoo` and sujood..."}

*Ta`deel-ul-Arkaan* can therefore not be attached to this command as being a *fardh*, as was claimed by Imaam ash-Shaafi`ee and Imaam Abu Yusuf رحمة الله عليهما.
وبيانه: أن الشافعي - رحمه الله - يقول: تعديل الأركان في الركوع والسجود فرض لحديث أعرابي خفف في الصلاة فقال له عليه الصلاة وسلم:

قُمْ فَصَلِّ فَإِنَّكَ لَمْ تُصَلِّ

هكذا قاله ثلاثاً

Imaam ash-Shaafi’ee رحمة الله عليه said that ta’deel-ul-arkaan in rukoo’ and sujood is fardh on the basis of the Hadeeth of the A`raabi (Sahaabi from the desert) who shortened his Salaah (i.e. his rukoo’ and sujood), so Rasoolullaah صلی الله علیه وسلام said to him: "Stand up and perform Salaah for you have not performed Salaah."

He said this thrice.

ونحن نقول: إن قوله تعالى:

وَارْكَعُوْا وَاسْجُدُوْا

خاص وضع لمعنى معلوم، لأن الركوع: هو الإحناء عن القيام، والسجود: هو وضع الجبهة على الأرض

والخاص لا يحمل البيان حتى يقال: إن الحديث لحق بياناً للنص المطلق

We respond to this by saying: with regards to the Aayah:

{"And perform rukoo’ and sujood..."}
It would have to then be a nasab (abrogation, i.e. of the Aayah), and that is not permissible on account of this Hadeeth being a khabr-e-waahid (singular narration). It is necessary to take into consideration the positions of both the Qur'an and the Sunnah. Something that is established through the Qur'an is farid, because it is absolute, and something established from the Sunnah is waajib, because it (i.e. the authenticity of the particular narration) is speculative (i.e. differed upon among the Muhadditheen).

This is a derivative from his statement, "And it is not permissible."

What he means is that, since kbaas cannot get an explanation attached to it (because it is already clear in and of itself), then it is invalid to make consecutiveness a condition (for Wudhoo), as was done by Imaam Maalik, or to make order (making Wudhoo in order) and saying the niyyah (intention) a condition, as was done by Imaam ash-Shaafi'ee, or to make
recitation of the *tasmiyah* a condition, as was done by the Zhaahiris
(followers of Imaam Daawud azh-Zhaahiri and Imaam ibn Hazm azh-Zhaahiri, founders of the Zhaahiri Madh-hab). To attach any such stipulations to the Aayat of Wudhoo is invalid. The Aayat of Wudhoo is:

{"Wash your faces..."}
Imaam ash-Shaafi`ee says that *tarteeb* (performing Wudhoo in order) and reciting the *niyyah* (intention) is *fardh* in Wudhoo, because Nabi صلى الله عليه وسلم said:

"Allaah does not accept the Salaah of a man until he places the purification in its (proper) places, so he washes his face, then his arms..."

And the Hadeeth:

"Actions are according to (their) intentions."

Wudhoo is also an action, and therefore it is invalid without a *niyyah* (intention).

We (the Ahnaaf) say: Allaah Ta`aalaa ordered us, in Wudhoo, to perform *ghasl* (washing) and *masah* (wiping), and both of these words are *khaas*, placed (used) for a singular, known meaning, and that is, (in the case of *ghasl*): *isaalah* (letting water flow over the limb), (and in the case of *masah*): *isaabah* (wiping). Therefore, attaching other conditions as is done by those who disagree cannot act as an explanation (attached) to something that is *khaas*, because (khaas) is already clear in and of itself. Therefore, it would have to be a *naskh* (abrogation), but that is not the case because *naskh* (abrogation of an Aayah with a Hadeeth) cannot take place with narrations that are *akhbaar aahaad* (singular narrations).

The objective is that the status of both the Kitaab (i.e. the Qur'aan) and the Sunnah be taken into consideration: whatever is established from the Kitaab...
(the Qur'an) is \textit{fardh} and whatever is established (proven) from the Sunnah is \textit{waajib}, as (is the case) in Salaah. However, there is no \textit{waajib} act in Wudhoo according to \textit{ijmaa`} (consensus), and the reason for this is that \textit{waajib} is the same as \textit{fardh} with regards to acting upon it (i.e. you have to carry out a \textit{waajib} in the same way as you have to carry out a \textit{fardh}, and a person is sinful for not doing it), and this is only the case with those `Ibaadaat (acts of worship) which are a goal in and of themselves (like Salaah, Sawm, etc., unlike Wudhoo, which is not an `Ibaadah in and of itself, but rather, it's a means to the actual `Ibaadah, which is Salaah). Thus, we take the ruling down (in Wudhoo) from \textit{wujoob} to Sunnah, so we say that all of these actions are Sunnah in Wudhoo (rather than \textit{waajib}).

The author says: "The (same applies to stipulating) \textit{tahaarah} (i.e. being in a state of Wudhoo) in the Aayat of Tawaaf."
Imaam ash-Shaafi`ee said: "Tawaaf of the Bayt (i.e. the Ka`bah) is not permissible without purity (i.e. Wudhoo), because Rasoolullah صلی الله عليه وسلم said:

"Tawaaf of the Bayt (Ka`bah) is Salaah."

And Rasoolullah صلی الله عليه وسلم said:

"A person in a state of hadath (impurity, not being in a state of wudhoo) must not perform Tawaaf, and neither must one who is naked."

We (the Ahnaaf) say: Tawaf is a word with a meaning which is well-known, and that is: circumambulating the Ka`bah. Thus, stipulating tabaarab (being in a state of wudhoo) in it (as being fardh) cannot act as an explanation attached to it (khaas), because it (khaas) is already clear in and of itself. Thus, it would have to act as a naskh (abrogation), but that cannot take place in the case of a khabr-e-waahid (solitary narration).

At most, it is waajib, and omitting it causes a reduction (in the reward) of the Tawaaf which is compensated for by a sacrifice if it be Tawaaf-e-Ziyaarat, or sadaqah if it be a different Tawaaf.

As for the increase of it being seven shawts (rounds), and beginning from the Hajr-e-Aswad, then perhaps that is established from the well-known narration, and that is permissible by consensus.

(والتأويل بالأطهار في آية التربص)

عطف على قوله: <شرط الولاء> وتفريع رابع عليه, أي إذا كان الخاص بينًا بنفسه لا يتحمل البيان فيبطل تأويل القروء بالأطهار في قوله تعالى:
وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلاَثَةَ قُروُءٍ

وبيان أن قوله تعالى: قروء, مشترك بين معي الطهر والحيض فأوله الشافعي رحمه الله تعالى

فَطَلِّقُوْىُنَّ لِعِدَّتِهِنَّ

على أن اللام للوقت, أي فطلقوهن لوقت عدتهن وىو الطهر, لأف الطلاؽ لم يشرع إلا في

الطهر بالإجماع

The author says: "And interpreting the Aayah of Tarabbus to be referring to (three periods) of purity."

This is a continuation from his statement regarding al-Walaa, and a fourth issue he has branched into (pertaining to that topic). What it means is that, because kbaas is clear in and of itself and has no possibility of explanation or clarification, it is then invalid to interpret the word "Quroo" in the Aayah as being periods of purity (i.e. after baidil), as in the Aayah:

{"And those women who have been divorced should wait for three quroo’..."}

The reason he says this is because the word quroo’ contains the meanings of both tuhr (purity) and baidil, so Imaam ash-Shaafi’ee interpreted it to be referring to purity (i.e. the woman should wait until three periods of purity have passed, as her ‘iddat). He did so because of the Aayah which says:

{"So divorce them at their ‘iddat (prescribed periods)..."}

He said that the laam used in the Aayah is a reference to waqt (time), i.e. divorce them at the time of their ‘iddat, which is tuhr (purity, i.e. when they are not in baidil), because divorce is not stipulated to be given except during tuhr (purity), by ijmaa’ (consensus).

وأوله أبو حنيفة رحمه الله بالحيض بدلالة قوله تعالى: ثلاثة. لأنه خاص لا يتحمل الزيادة
والنقصان، والطلاق لم يشرع إلا في الطهر فإذا طلقها في الطهر وكانت العدة أيضاً هي الطهر
فلا يكون إلا أن يحسب ذلك الطهر من العدة أولاً. فإن احتسب منها كما هو مذهب الشافعي
Imaam Abu Haneefah, on the other hand, interpreted it (quroo') as referring to baidib, because of the word used in the Aayah: thalaathab (three), because that word (three) is khaas, and thus has no possibility of increasing or decreasing (it can never be more than three or less than three, it has to be exactly three, because it's khaas), and, talaqaq (divorce) is meant to be given only during tubr (a period of purity, free from baidib). So, if he gives her a divorce during tubr, and the `iddat is also tubr (like Imaam ash-Shaafi’ee says), then either he has to count that tubr (in which she is divorced) as being from the `iddat, or not. If he counts it as being from the `iddat, as is the Madh-hab of Imaam ash-Shaafi’ee, then (rather than being three full periods, as the Aayah mentions) it would be two quroo's and a bit of the third (which is the one in which he had divorce her), because a bit of it had already passed. On the other hand, if he does not count that tubr as being part of (the three periods), but says it has to be another three (three besides that one), then this would be three quroo's plus a bit of a fourth. In both cases, it would be going against khaas, which is three (cannot be more than three or less than three, otherwise it's not khaas).

وأما إذا كانت العدة هي الحيض والطلاق في الطهر لم يلزم شيء من المحذورين, بل تعد ثلاث حيض بعد مضي الطهر الذي وقع فيه الطلاق.

وقد قيل: إن هذا الإلزام على الشافعي يمكن أن يستبطن من لفظ قروء بدون ملاحظة قوله:

ثالث, لأنه جمع وأقله ثلاث, وهذا فاسد. لأن الجمع يجوز أن يذكر ويراد به ما دون الثلاث

كما في قوله تعالى:

الجَحْرُ أَشْهُرٌ مَّعْلُوْمَاتٌ

بخلاف أسماء العدد فإنها نص في مدلولاتها.

However, if `iddat is taken to be baidib and talaqaq (divorce) is issued during tubr (purity), then neither of these two (above-mentioned scenarios) would happen; rather, you would have three full periods of baidib after the passing of the period of tubr in which the divorce had been issued.
It has also been said: this imposition upon Imaam ash-Shaafi`ee can be drawn out from the word *qiroo* without considering his statement of "three", because it is plural and the minimum for plural is three. This is erroneous, because it is possible for plural to be mentioned and yet what is intended is less than three, as is the case in the Aayah:

{"Hajj is in the months well-known."}

This is contrary to the numerical nouns, for they are clear in their purport.

وأما قوله تعالى:

فطَلِّقُوْىُنَّ لِعِدَّتِهِنَّ

فمعناه لأجل عدتهن - أي طلقوهن بحيث يمكن إحصاء عدتهن وذلك بأن يكون في طهر لا

وطئ فيه, لأنه يعلم حينئذ أنها غير حامل فتعدد بلات حيض بلا شهبة

As for the Aayah:

{"So divorce them at their `iddat (prescribed periods)..."}

What it means is: for the sake of their `iddat, i.e. in such a way that it is possible to count their `iddat, and that is by issuing *talaaq* (divorce) during a period of *tuhr* (purity) in which no intimacy had taken place, because he will know, thereby, that she is not pregnant, and thus three periods of *baidb* can be counted without any doubt.

ولا تطلقوا في طهر وطئ فيه لأنه لم يعلم حينئذ أنها حمل تعدد بوضع الحمل, أو غير حامل تعدد

بالحيض, وكذا لا تطلقوا في الحيض لأن هذا الحيض لم يعتبر عدئنا من العدة, ولا الظهر الذي

فنيبغي أن يحسس فيه ثلاث حيض آخر فتطول العدة عليها بلا تقريب

And do not issue *talaaq* during a *tuhr* in which intimacy had taken place, because it would not be known, in such a case, whether she is pregnant and thus her `iddat ends when she gives birth, or if she is not pregnant and thus her `iddat is three periods of *baidb*. Similarly, do not issue *talaaq* during *baidb*, because that *baidb* will not be counted by us (the Ahnaaf) as being from the (three waiting periods) nor the *tuhr* after it, but only the three (periods of *baidb*) after that, and this would cause the `iddat to be very lengthy upon her without any approximation.
Both us and Imaam ash-Shaafi`ee derive the *qaraa'in* (*quroo'*) or waiting periods) from the same Aayah through different facets. I have explained this in *at-Tafseerat al-Ahmadiyyah* in greater detail and with further elucidation, so you may research it there if you wish.

The author has mentioned seven branches with regards to the issue of *khaas*. Four have already passed now and three remain. Between the mentioning of the four and then the three, he has mentioned two objections Imaam ash-Shaafi`ee has against us (i.e. the Ahnaaf) along with our answers to those two objections. This has been done in the form of a parenthetical clause. He said:

The author says: "The legalizing of the second husband, by the Hadeeth of *al-`Usaylah*, not by the Aayah:

{"Until she marries a husband other than him."}
This is (stated by the author) as a reply to a question which is hidden (not mentioned here) from the part of Imaam ash-Shaafi`ee. Before mentioning his question it is necessary to prepare by giving an introduction, and that is:

If a husband divorces his wife, and she then marries another husband, and thereafter the second wife divorces her as well and she then remarries the first husband, the first husband will once again be in possession of three independent *talaq*s (which he can issue), by consensus. If he now then divorces his wife with less than three *talaq*s, such as by divorcing with one *talaq* or two, and that divorced wife then marries another husband, and then that husband divorces her and she remarries the first husband (who had given her one *talaq* or two), then in this case, according to Imaam Muhammad and Imaam ash-Shaafi`ee, the first husband (who had given only one *talaq* or two) will possess only the remainder of the *talaq*s which he had (i.e. not the full three. So if he had given one, he now will only have two. If he had given two, he now will only possess one *talaq*.)

**Meaning,** if previously he had given her one *talaq* (divorce), then now he can only give her two (more), and it will become *mughallazhab* (irrevocable). If previously he had issued two *talaq*s to her, then now he only has one *talaq* remaining.

واعترض عليه الشافعي بأن المتمسك في هذا الباب هو قوله تعالى:

**فإن طلَّقها فلا تحل له من بعد حتى تنكح زوجًا غيّرًا.**

كلمة حَتّى لفظ خاص وضع لمعنى الغاية والنهائية فيما بعدهم فلم يفهم أن بعد النكاح يحدث حل جديد للزوج الأول ففي هذا إيطال موجب الخاص الذي هو حَتّى.
According to Imaam Abu Haneefah and Imaam Abu Yusuf رحمته الله عليهما، the first husband will again possess three *talaaqs* and whatever *talaaqs* he had issued prior (to this remarriage) will not be regarded as inconsequential, because the second husband had acted as a "halaalizer" of her for him, the first husband, by having made a new contract (of marriage), and thus whatever *talaaqs* had been issued before are wiped out.

For this reason, Imaam ash-Shaafi`ee objected to it (this view), saying that what is to be held onto in this issue is the Aayah:

> "If he divorces her, she is not permissible for him until she marries a husband other than him..."

The word "*hattaa*" (until) is a word that is *khaas*, used to give the meaning of a limit and end, so what is understood from it is that the marriage with the second husband acts as an "end" for the prohibition (of marriage to the first husband) which had taken place with the issuing of the three *talaaqs*, and an end or limit has no effect on what comes after it, so it is not understood from this that after the (second marriage), a new exemption (i.e. three new *talaaqs*) are given to the first husband, because that would entail an invalidation of what is necessitated by *khaas*, which is "*hattaa*".

So, since the second husband does not act as a "halaalizer" for that in which is found a limit, and that is the three *talaaqs* (divorces), then, in that in which a limit is not found, and that is (in the case of less than) three (divorces), it is more rightful that the second husband will not be making *halaal* (the wife for the first husband) with a new contract (i.e. three new *talaaqs*).
The author says in his reply to this (objection of Imaam ash-Shaafiee) on the part of Imaam Abu Haneefah: "That the second husband makes the wife permissible for the first husband, we derive this from the Hadeeth of al-`Usaylah, not by the Aayah:

{"Until she marries (a husband other than him)..."}

Contrary to what you have claimed."

وبيانه أن امرأة رفاعة جاءت إلى رسول الله صلى الله عليه وسلم وقالت: إن رفاعة طلقتني ثلاثاً فنجحت بعد الزبير بن الزبير فما وجدته إلا كهدبة ثوبي هذا تعني وجدته عتبناً — فقال عليه الصلاة والسلام: أتينين أن تعودي إلى رفاعة فقالت: نعم، فقال عليه الصلاة والسلام:

لا، حتى تذوقين من غسيلته وذوق هو من غسيلتك.

فهذا الحديث مسوق لبيان أنه يشترط وطئ الزوج الثاني أيضاً ولا يكفي مجرد النكاح كما يفهم من ظاهر الآية. وهذا الحديث مشهور قبلو الشافعي رحمه الله أيضاً لأجل اشتراط الوطئ للزوج الثاني، والزيادة بمثله على الكتاب جائز بالإتفاق.

The explanation of this is that the wife of Hadhrat Rifaa`ahرضي الله عنو came to Rasoolullaahصلى الله عليو وسلم and said, "Rifaa`ah had divorced me, and thereafter I married `Abdur Rahmaan ibn az-Zabeer, but I found him to be like the edge of my garment, i.e. I found him to be impotent." So Rasoolullaahصلى الله عليو وسلم said: "Do you desire to return to Rifaa`ah?" She said, "Yes." He said, "No, not until you taste from his honey and he tastes from yours."

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1 She claimed this, but in other riwaayaat (narrations) it is mentioned that Hadhrat `Abdur Rahmaan ibn az-Zabeer رضي الله عنه denied this claim, and it is proven that he had children, so the 'Ulamaa have mentioned that she had said this in order to go back to Hadhrat Rifaa`ahرضي الله عنه. 
This Hadeeth clarifies that marital relations with the second husband is stipulated (i.e. in order for her to again be permissible for the first husband), and just get married only is not enough, as would be understood from the literal meaning of the Ayah. This Hadeeth is well-known and is accepted by Imaam ash-Shaafi‘ee also, with regards to the stipulation of intercourse with the second husband (for the validity of remarriage to the first husband). An addition of this kind upon (the ruling mentioned in) the Qur’aan is permissible by consensus.

This Hadeeth, just as it proves that marital relations is stipulated (for the validity of "halalab") through `ibaarat-un-nass (that which is clearly mentioned in the text), similarly it proves that the second husband makes the (wife) Halaal (for the first husband), through ishaarat-un-nass (that which is derived from the text). That is because Rasoolullaah صلی الله علیه وسلم said:

"Do you desire to return to Rifaa`ah?"

He did not say, do you desire for your (being) prohibited to come to an end.

The return (mentioned here) is the return to the initial state. In the initial state, the permissibility (of her) was established (for him); thus, now that the initial state has returned, the permissibility (of her for him as well as the three talaq) returns as well and are renewed by the independence of (the second marriage, i.e. by having moved to a different husband).

Thus, when it is established through this nass (clear text) that the permissibility returns even in that case where there hadn't been
permissibility anymore, which is by him having given three *talaags*, then, in the case where permissibility was still found albeit to a weaker degree, such as in the case of him having given less than three *talaags*, it is even more rightful that the second husband acts completes the permissibility which had weakened (i.e. makes her completely permissible for the first husband once more).

Thereafter, the author said: "And the nullification of the protection (*'ismat*) of the stolen item, because of the Aayah: {"A recompense..."} not because of the Aayah: {"So cut (off their hands)..."}"

This, too, is an answer given by him to a hidden question posed to us by Imaam ash-Shaafi’ee رحمه الله.

Before mentioning the question it is necessary to first mention an introduction, and that is: the thief, when he steals something from someone and his hand gets cut off as a result, then, if the stolen item is still in his possession, it must be returned to the owner, and there is consensus on this. However, if the item was destroyed (used up), then, according to Imaam ash-Shaafi’ee he (the thief) is liable to compensate (the owner) for it, regardless of whether the item was destroyed by itself or he (the thief) destroyed it (used it). According to Imaam Abu Haneefah, on the other hand, the thief is not liable for compensation ever, except in one report (from him) that the thief is liable for compensation if he had destroyed it (he himself had used it up). That is so because, when the thief intends to steal
something, then just before the theft takes place, the protection ('ismat) of the wealth (i.e. its state of being sacred, not permissible for any other person to deal in it) becomes nullified until it becomes for him from the rest of that which is not straight, and its 'ismat (protection) transfers to Allaah Ta`alaa, and He is not in need of compensation of wealth.

إذ إنما يجب الرد إذا كان موجوداً لأنه لم يبطل ملكه وإن زالت عصمتها، فلرعاية الصورة قلنا:

بوجوب المال ولرعاية المعنى قلنا بعدم ضمانه.

وعاعرض عليه الشافعي بأن المنصوص في هذا الباب هو قوله تعالى:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوْا أَيْدِيهِ وَالْخَلَفُ

والقطع لفظ خاص وضع لمعنى معلوـ وىو الإبانة عن الرسغ, ولا دلالة لو على تحول العصمة

عن المالك إلى الله تعالى. فالقول ببطلان العصمة زيادة على خاص الكتاب.

Returning the stolen item is only waajib if the stolen item still exists in the possession of the thief, and that is because the ownership of the item (by the owner) has not been nullified, but rather, its protection ('ismat, or sanctity) has been nullified. So, considering the scenario we say it is waajib to (return) the wealth (stolen item if it is still in the possession of the thief), but considering the meaning we say there is no compensation (if the item was destroyed or used up).

Imaam ash-Shaafi`ee objected to this, saying that the nass is upon the Aayah:

{"The male thief and the female thief, cut off their hands as a recompense for that which they had committed..."}

The word cutting (mentioned in the Aayah) is khaas, having a specific, known meaning, which is (in terms of "cutting the hand") "separation from the wrist". Nothing in this (Aayah) points out to the 'ismat (protection of the item) transferring from the owner to Allaah Ta`alaa, so the claim of the nullification of the protection is an addition to the khaas of the Qur'aan (which is invalid).

فأجاب المصنف عن جانب أبي حنيفة رحمه الله تعالى بأن بطلان العصمة من المال المسروق:

وإزالتها من المالك إلى الله تعالى إنما نبذه بقوله تعالى:
وذلك لأن الجرأ إذا وقع مطلقاً في معرض العقوبات قادمًا به ما يجب حقاً لله تعالى، وإنما يكون حقاً لله تعالى إذا وقعت الجناية في عصمه وحفظه. وإذا كان كذلك فقد شرع جزاؤه جزاءاً كاملاً وهو القطع ولا يحتاج إلى ضماف الماء. غايته أنو إذا كاف الماء موجوداً في يده يردّ إليه لأجل الصورة. ولأن (جزى) يجيء بمعنى (كفا) فيدف على أن القطع ىو كاإذ لهذه الجناية لا يحتاج إلى جزاء آخر حتى يجب الضماف.

The author responds to the objection (by Imaam ash-Shaafi`ee) on behalf of Imaam Abu Haneefah رحمة الله عليه by saying that, (our view) that the `ismat (protection) of the stolen wealth transfers from the owner to Allaah Ta`ala is based on: {"A recompense for what they had committed...") and not based on: {"So cut (off their hands)...")

The reason behind this is that when the term jazaa (recompense) is used unrestrictedly in terms of punishments, then the intended meaning is, that (punishment) which has become waqjib because it is a Haqq (Right) of Allaah Ta`ala, and it is only a Right of Allaah Ta`ala (rather than being a "right of the slave") if the crime falls into (that which is) under His Protection and Safeguarding. Since it is like that, then He has legislated its jazaa (recompense) as a complete recompense, and that is, the cutting (off of the hand of the thief), and He (Allaah) is not in need of compensation of wealth. At most, if the stolen wealth is (still existing) in the possession of the thief, it will be returned to the (original owner) out of regard for the scenario or (outward) form (i.e. the outward form or appearance is that it was stolen from the protection of the owner, Zaid, for example, but the reality is that it was stolen by the thief) from the Protection of Allaah Ta`ala and that is why Allaah Ta`ala has legislated the badd (punishment) of cutting the hand, because it is the Haqq of Allaah Ta`ala.

The word jazaa (recompense) carries the meaning of kafaa (to be sufficient), and that points out that the (badd) of cutting (his hand off) is sufficient as a
punishment for the crime he had committed and thus there is no need for an additional punishment, which would be that of making his liable for compensation of what he had stolen.

This is an excerpt from what I mentioned in *at-Tafseer al-Ahmadi*, and let that suffice you.

After this explanation, the author begins with the last three branches (i.e. after mentioning the two objections and clarifying them, he has now started with the final three branches from the seven branches he goes into with regards to the term *khaas*). He says:

"For this reason, it is valid to give *talaaq* after *khula`* (divorce by way of monetary compensation, whereby the wife pays back the husband the mahr he had given her, or part of it, in return for him divorcing her.)

Meaning, because the purport of *khaas* is *qat`iyy* (absolute), *waajib* to follow and abide by, it is valid - according to us (Ahnaaf) for a *talaaq* to be issued upon a woman even after *khula`*, contrary to (the view of) Imaam ash-Shaafi`ee.

The explanation of this is that Imaam ash-Shaafi`ee says: "*Khula`* counts as *faskh* (dissolution of the marriage); thus, no marriage remains after *khula`*, and nor is it a *talaaq* (divorce), so *talaaq* is not valid after it either."

وعندنا هو طلاق يصح إيقاع الطلاق الآخر بعده عملاً بقوله تعالى:
According to us (Ahnaaf), it is a *talaaq* and it is valid for a *talaaq* to be issued after it, because of the Aayah:

> "Then if he divorces her, she is not permissible for him after that..."

And that is because Allaah Ta`aalaa said firstly:

> "*Talaaq is twice: (thereafter either) keep (her) with goodness or separate (from each other) with goodness.*"

Meaning, *talaaq-e-raj`i* (revocable divorce) is twice, or, the Shar`i *talaaq* is one time after another time, with separation (between the two), not all at once. Thereafter, it is *waajib* on the husband to either keep her (take her back) with goodness, i.e. living with her in a good way, or setting her free with kindness, i.e. separation in a complete way.

Then he mentions the issue of *khula`* and he mentions the Aayah:

> But if you fear that they will not uphold the limits (set by) Allaah, then there is no sin on them if she gives back (the mahr in return for her khula`)..."

Thereafter, he mentions the issue of *kbula`* and he mentions the Aayah:
Meaning, if you (the wise men who have been appointed to reconcile between the spouses) think that they will not uphold the limits set by Allaah Ta’ala, by living together in goodness, then there is no sin on either of them if the woman gives back the mabr in order to free herself from the husband, and he gives her talaaq (in return).

فَإِفْ طَلَّقَهَا فَلاَ تَحْلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ

أي فإن طلق الزوج المرأة ثانيةً فلا تحل المرأة للزوج من بعد الثالث حتى تنكح زوجاً غيرها ووطنها وطللقها. فالشافعي رحمة الله يقول: إنه متصل بقوله: الطالق مرنان. حتى تكون هذه الطلقة ثانية.

وذكر الخلع فيما بينهما جملة معترضة لأنه فسخ لا يصح الطلاق بعده ونحن نقول: إن الفاء خاص وضع لمعنى مخصوص وهو التعقيب وقد عقب هذا الطلاق بالإفتداء فينغي أن يقع بعد الخلع وهو أيضاً طلاق غايته أن يلزم أن تكون الطلقات أربعة إثنان في قوله:

الطالق مرنان

والثانية الخلع، والرابعة هي هذه. ولكنه لا يلزم فن الخلع ليس طلاقاً مستقلاً على حدة بل مندرج في الطلقاتين

Meaning, if the husband divorces the wife three times, then the wife is not permissible for the husband after the third (divorce) until she marries a husband other than him, and he has intercourse with her, and thereafter he divorces her. Imaam ash-Shaafi`ee said: "It is connected to the Aayah: {"Talaaq is twice."} So that this becomes the third talaaq, and the mention of khula` between them is a parenthetical clause, because it is faskh (dissolution of the marriage) and thus talaaq is not valid after it."
We (the Ahnaaf) say: The *fua‘* (in the Aayah) is *khaas*, having a specific meaning, and that is *at-ta’eeb* (consequence or following up), and this *talaq* had been followed up by (the wife) ransoming herself (i.e. *khula‘*), so it is necessary that it takes place after *khula‘*, and so it is also a *talaq*.

This would necessitate that there are four *talaqs*: two mentioned in the Aayah:

{"*Talaq is twice.*"}  
The third being *khula‘*, and the fourth being this one (i.e. a divorce being issued after *khula‘*); however, there is no harm in that because *khula‘* is not an independent *talaq*, but rather, it falls under the two *talaqs* (mentioned in the Aayah).

So it is as though it was said:

{"*Talaq is twice.*"}
Whether they were raj'i, for then it would necessitate: {"Keep her (with goodness) or free (her from marriage) with goodness..."}

Or both of them (the talaaqs) are within the khula', and then it (khula') will be a talaaq-e-baa'in (irrevocable divorce).

If he divorces her after the two times mentioned previously (in the Aayah), then:

{"Then she is not permissible for her thereafter until (unless) she marries a husband other than him..."}

Based on this, what has been said comes forth: it necessitates that only the talaaq which occurs after khula', its ruling is the absence of permissibility, not the one that is not as such, and it necessitates that khula' has to be after the two (talaaqs), based on the Aayah: {"So if you fear..."}

وَلَكِنْ يَرْدَ أَنْ هَذَا كُلُهُ إِنْنَمَا إِذَا كَانَ التَّسِرْحُ بِالإِحْسَانِ إِشَارَةً إِلَى تَرْقُبِ المَرَاجِعَةِ كَمَا حَرَّتَ. وَأَما

إِذَا كَانَ إِشَارَةً إِلَى الطَّلَقَةِ الْتَثْلَاثَةِ عَلَى مَا رَوَى عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ

هُوَ الطَّلَقَةُ الْثَالِثُ

فَحْيَنَذِ بِكُونِ قُوُّهُ تَعَالَى:

فَإِنْ طَلَّقَهَا

بِنَا نَ لَذْلِكَ. وَلَا تَعْلَقُ لَهُ بِمَسَألَةِ الخَلَعِ أَصَلًّا. فِي كُونِ الْمَعْنِيَ أَنَّ بَعْدَ الْمَرْتَيْنِ إِمَّا إِمْسَاكٌ بِمَعْرُوفٍ

بِالمَرَاجِعَةِ أَوْ تَسِرْحُ بِالإِحْسَانِ بِالْطَّلَقَةِ الْتَثْلَاثَةِ. فَإِنَّ أَثْرِ التَّسِرْحُ بِالإِحْسَانِ فَطَلَقَهَا ثَالِثً

فَلاَ تَحَلُّ لَوْ مِنْ بَعْدَ

الآيَة

هَذَا خَلاصةْ مَا قَالَهُ وَالبَعْضُ فِي الْتَفْسِيرِ الْأَحْمَدِي

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However, it appears that all of this only appears to if "at-Tasreeb bil-Ibsaan" (letting the wife go, with goodness) implies not taking her back (i.e. issuing two talaaq-e-raj‘i and then not taking her back). However, if it is an implication to issuing a third talaaq, based on the Hadeeth: "It (refer to (giving) the third talaaq." Then in that case, the Aayah: {"If be divorces her..."} will be an explanation for it and has no connection, in essence, with the issue of khaala`. So the meaning will be: after the issuing of two divorces, he has the choice of either keeping her with goodness, by taking her back, or releasing her (i.e. divorcing her) with goodness by the issuing of a third talaaq. If he chooses to rather release her, so he issues a third talaaq, then: {"Then she is not permissible for him thereafter..."}

This is a summary of what has been mentioned. For further detail, refer to at-Tafseer al-Ahmadi.

The author says: "In the case of a mufawwadhab (or mufawwidbali), mah-e-mithl ²will become waajib by the same contract."

This is a continuation from his statement, "The occurrence of talaaq is valid..." It is a branch off from the discussion on the ruling of khaaas.

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² *Mahr-e-Mithl* is “a mahr of similar (brides)”. It applies in the case of a nikaah where no mahr was stipulated. In such a case, the bride receives *mah-e-mithl*. *Mahr-e-Mithl* means, the same mahir as her female relatives from her father’s side had received when they got married, such as her aunts, her sisters, and her female cousins (paternal only).
What he means is that, because acting on *khaas* is *waajib* and *khaas* does not carry the possibility of clarification, then, in the case of a *mufawwidhab* or *mufawwadhab*, the moment the marriage contract has been concluded, *mabr-e-mithl* becomes *waajib* without being delayed until the time of consummation.

The difference between the two (*mufawwidhab* and *mufawwadhab*) is, the *mufawwidhab* is a woman who gives herself to a man without *mabr* (i.e. without any *mabr* being stipulated at all). A *mufawwadhab* is a woman who has been given to a man by her *wali* without any *mabr* (without stipulating any *mabr*), and that is the correct view (i.e. the correct view is that when the author used this word, he is referring to a *mufawwidhab* and not a *mufawwadhab*), because the first (a *mufawwidhab*) is subject to difference of opinion, because her *nikaab* is invalid according to Imaam ash-Shaafi`ee رحمة الله عليه (because according to the Shaafi`ee Madh-hab, *nikaab* without the permission of the *wali* is invalid.)

What it means is that, in the case of a woman who gives herself (to a man) without (stipulation) of *mabr* or on (the condition) that no *mabr* will be due to her, then, according to Imaam ash-Shaafi`ee رحمة الله عليه it is not *waajib* (on the man to give) *mabr* to her except with consummation (i.e. only if consummation of the marriage takes place); thus, if one of them dies before consummation of the marriage, then *mabr* is not *waajib* according to Imaam ash-Shaafi`ee. According to us (Ahnaaf), on the other hand, the full *mabr-e-mithl* is *waajib* from the moment the marriage contract is concluded, in terms of a responsibility (upon the man), and it is *waajib* upon him to give it (to
her) in the event of either consummation of the marriage or death, on the basis of the Aayah:

{"And permissible for you is what is besides that, (provided) that you seek (them in marriage) with your wealth..."}

The Aayah: {"That you seek..."} is a badl (substitute clause) for {"What is other than that..."} or, it is a maf`ool labu (object) by there being a hidden (implied) laam, i.e. what is permissible for you is what is other than the prohibited things, so that you may seek (women in marriage) with your wealth. The baa` is a term that is khaas, used for a known meaning, and that is al-Ilthaq (connecting). It has also been said that al-Ibtighaa (seeking) is a word that is khaas, used for a known meaning, which is "to seek".
(وكان المهر مقدراً شرعاً غير مضاف إلى العبد)

عطف على ما سبق، وتفرع على حكم الخاص، أي ولا أن العمل بالخاص واجب ولا يحتمل
البيان كان المهر مقدراً من جانب الشارع غير مضاف تقدرته إلى العبد. وبيانه أن تقدر المهر
عند الشافعي رحمة الله مفوض إلى رأي العباد واختيارهم. فكلما مصلح شملنا يصلح مهماً عنة
وعندنا وإن كان لا يقدر في جانب الأكبر لكن يقدر في جانب الأقل وهو أن لا يكون أقل من
 عشرة درايم عملاً بقوله تعالى:

{قد علمنا ما فرضاً علينا في أزواجهم وما ملكت أيمانهم}

أي علمنا ما قدرنا عليهم في حق أزواجهم، وهو المهر

The author says: "Mahr is stipulated and determined (the amount) by the
Sharee`ah, and it is not left up to the slave."

This is a continuation from what has preceded, and it is another branch off
from the ruling of khaas. What he means is that, because acting on what is
khaas is waajib and khaas does not carry the possibility of explanation, then,
mahr is determined and stipulated by the Lawgiver (i.e. by Allaah Ta`ala
Himself), and its (amount) is not determined by the slaves. The explanation
of this is that, according to Imaam ash-Sha`fi`ee رحمة الله عليه, the determining
of the amount of mahr is left up to the opinion and choice of the slaves (i.e.
of the people). According to him, whatever is valid to be used as a payment
(in a business transaction) is valid to be used as mahr.

According to us (the Ahnaaf), even though the maximum limit of mahr has
not been determined or fixed by the Sharee`ah, however, the minimum limit
definitely has been determined, and that is: no less than 10 dirhams, based
on the Aayah:

{"We know what We had stipulated upon them with regard to their wives and what their
right hands possess (i.e. slaves)..."}

Meaning, We know what We had apportioned, fixed and determined for
them in terms of the right of their wives, which is mahr.
The word *fardh* is *khaas*, used for a specific meaning, which is "*at-Taqdeer*" (to determine; fix; apportion). Similarly, the pronoun in the first-person is *khaas*, according to what they (the linguists) have mentioned. Similarly, *al-Isnaad* (the ascription) is *khaas*, according to the author of *at-Tawdheeb*.

Thus, it is knows that the stipulation and fixing of the mahr is in the Knowledge of Allaah Ta’ala, and Nabi صلى الله عليه وسلم had explained it, saying: "There is no mahr less than 10 dirhams (silver coins)."

We make *qiyaas* (analogical deduction) on that (Hadeeth) when it comes to the issue of cutting the hand (of a thief), so we say that in that case too, the item stolen must be something worth 10 dirhams (silver coins), because *at-Taqdeer* (apportioning; stipulating) is *khaas*, even if the thing apportioned; fixed; determined is mujmal (concise), requiring clarification, and this is according to the terminology of the Fuqahaa. As for linguistically, then its literal meaning is making something *waajib* (obligatory) and absolute. For this reason, Imaam ash-Shaafi’ee said that the *fardh* mentioned here has the meaning of "making something waajib", using as evidence the fact that it is made transitive by the use of "*alaa*" (upon), and by the fact that "what your right hands possess" has been made `*atf* (coupled with) "their wives", and the (logic) behind this is that, there is no *mahr* for "what your right hands possess (i.e. slaves)", and so, (the intended meaning of *fardh* cannot be apportioning; determining of *mahr*), the intended meaning is *nafaqah*. 
(expenditure) and clothing (them, i.e. wives or slaves), and that is waajib whether it be wives or "what their right hands possess."

قُلْنا: تَعَدَّيْتُهُ بَيْنَ هَذَا فَكَيْنَا مَعْنِيَ الإِجَابَةِ، وَعَطَفَ مَا مَلْكَتْ أَيْمَانُهُ بِتَقْدِيرٍ

أَفْضَرَّنَا ثَانِيٌّ وَمَا فَضَرَّنَا عَلَيْهِمْ فِي مَا مَلْكَتْ أَيْمَانُهُمْ، عَلَى أَنْ يُؤْمِنَ هَذَا بَيْنَهُمْ أَوْجُباً،

وَالأَوْلِي بَيْنَ مَا قَدْ رَّضَى، هَكَذَا قَالُوا، ثُمَّ ذُكِّرَ المَصْنُفُ رَحْمَهُ اللهُ دَلَّال كَلِّ مَسْئُولِ الْعَلَمِ الْحَرَامِي

فَقَالَ: (عَمْلًا بِقُولِهِ تَعَالَى: فَإِفْ طَلَّقَهَا فَلا تَحْلُّ لَهُ

وَأَنْ تَبْنِغْوا بَيْنَ أَمْوَالِكُمْ

وَقَدْ عَلِمْنَا مَا فَضَرَّنَا عَلَيْهِمْ

فَقُولُهُ: (عَمْلًا) تَعْلِيل لَقُولِهِ: (صَحِيح) أَلْخًّ عَلَى طَرِيقِ الْلُّفَّ وَالنَّشْرِ المَرْتَبِ، فَقُولُهُ:

فَإِنْ طَلَّقَهَا فَلا تَحْلُّ لَهُ

نَاظِرٌ إِلَى الْمَسْئُولَةِ الْأَوْلِيَّة، وَقُولُهُ تَعَالَى:

أَنْ تَبْنِغْوا بَيْنَ أَمْوَالِكُمْ

نَاظِرٌ إِلَى الْمَسْئُولَةِ الْثَانِيَة، وَقُولُهُ:

قَدْ عَلِمْنَا مَا فَضَرَّنَا عَلَيْهِمْ

نَاظِرٌ إِلَى الْمَسْئُولَةِ الْثَالِثَة، وَقَدْ بَيَتَتْ كُلَّ ذِلِّلٍ بَيْنَهَا عَلَى مَسْئُولِ الْفِتْنَةِ

ثُمَّ لَمْ يُفْرِغْ المَصْنُفُ رَحْمَهُ اللهُ عَنْ تَعْرِيفِ الْحَصَائِرِ وَحَكْمِهِ تَفْرِيعَهَا أَرَادَ أَنْ يُيِّنَ بَعْضَ أنواعِهِ

المَسْتَعْمَلَةِ فِي الْشَّرِيعَةِ كَثِيراً وَهُوَ الْأَمْرُ وَالْبَتْهِي، فَقَالَ:
We (the Ahnaaf) say: the reason for it being transitive with "*alaa*" (upon) is to give the meaning of obligating (as well), and the reason behind "what thier right hands possess" being `*atf* (coupled) to at-Taqdeer (apportioning), which is "*Faradhaa*", i.e. "and what We determined regarding what their right hands possess," is a second (object), and the meaning is, in regards to "what their right hands possess", it (the term *faradhaa*) gives the meaning of obligating, and in regards to the first one (i.e. their wives) it gives the meaning of "We stipulated; determined; fixed; apportioned". This is as they have mentioned.

Thereafter, the author mentions the proofs behind each of three *masaa’il* (rulings), so he says: "According to the Aayah:

{"So if he divorces her, she is not permissible for him..."}, and {"That you seek (marriage to women) with your wealth..."} and {"We know what We had determined upon them..."}

His statement: "According to," is a *ta’leel* (explanatory justification) for his statement, "It is valid", in the form of connecting and expanding (the meaning). The Aayah: {"If he divorces her, then she is not permissible for him..."} is (the evidence) for the first ruling. The Aayah: {"That you seek (wives in marriage) with your wealth..."} is (the evidence) for the second ruling. The Aayah: {"We know what We had determined upon them..."} is (the evidence) for the third ruling. I have explained all of that in detail under each ruling, so reflect.

Thereafter, once the author ُرحمة الله عليه completed his definition of *khaas*, and its ruling, and the the subjects he branches off into, he now intends to explain its different types used very often in the Sharee`ah, which is *amr* (command) and *nabi* (prohibition), so he says:

أنواع الخاص

4. Types of Khaas

الأَمْرُ

4.1. Al-Amr (Command)
The author says: "From it (the types of *khaas*), one of them is *amr* (command), and that is the saying of one person to one, by way of regarding himself as being higher and (in a higher position, having more authority), "Do (such-and-such)."

Meaning, from the types of *khaas* is *amr*, i.e. something called *amr*, not the term itself, because it is true that it (*amr*) is such a term used for a specific, known meaning, and that is: seeking to make something binding.

The word *qowl* is a *masdar* (root noun), and the meaning of it is “*maqool*” (something that is said), because *amr* is from the categories of *lafzh* (a word or term), and it (*lafzh*) is a *jins* (species) which encompasses all words.

The statement of the author: "By way of thinking himself to be higher (or having more authority)." By this, asking, or requesting, and Du`aa, all of it is excluded. *Nabi* (prohibiting) remains, but that is also excluded when he says, "Do (such-and-such)."

ومنه الأمر، وهو قول القائل لغيره على سبيل الاستعلاء: إفعل

أي من الخاص الأمر، يعني مسمى الأمر لا لفظه، لأنه يصدق عليه أن لفظ وضع لمعنى معنى معلوم وهو الطلب على الوجوب. والقول مصدر يراد بو المقول، لأن الأمر من أقسام اللفظ وهو جنس يشمل كل لفظ

وقولو: <على سبيل الاستعلاء> يخرج بو الإلتماس والدعاء وبقي فيو النهي داخلاً فجرج بقولو <إفعل>

والمراد بقوله <إفعل> كل ما كان مشتقاً من المضارع على هذه الطريقة سواء كان حاضراً أو غائباً أو متكالماً معروفاً أو مجهولاً، لكن بشرط أن يكون المقصود منه إيجاب الفعل، وبعد القائل نفسه عالياً سواء كان عالياً في الواقع أو لا، وللهاذا نسب إلى سوء الأدب إن لم يكن عالياً.

وبداذا ذكرنا انادفع ما قبل: إن أريد به إصطلاح العربية فلا حاجة إلى قوله: <على سبيل الاستعلاء> لأن الالتماس والدعاء أيضاً أمر عندهم، وإن أريد به إصطلاح أهل الأصول فيصدق عليه ما أريد به التهديد والتعجب لأنه أيضاً على سبيل الاستعلاء. وذلك لأن لا نتكلم على
The meaning of him saying, "Do (such-and-such): this refers to any (command) derived from the mudhaari` (present-tense) form of the verb, whether the command be in the form of third-person, second-person or first person (speaker), and whether known or unknown. The condition is that the intended person must be eejaab-ul-fi`l (making a certain action binding) and that the speaker considers himself to be higher (than the one he is commanding), whether he really is higher or he isn't. It is for this reason that issuing a command is regarded as bad manners (soo'-ul-adab) if the one giving the command isn't actually higher (in a higher position) than the one he is issuing the command to.

Based on that, what has been mentioned comes forward: if what is intended by (amr) is the terminology of it as used by the (people) of Arabic (i.e. the linguists), then there would have been no point in saying "by way of authority or being higher", because according to them, even requests, petitioning, asking, Du`aa, etc. falls under comand. However, if what is intended by it is the meaning as used in the terminology of the people of Usool (the Usooliyyeen), then that would apply even to using it with the intention of warning of or making something too difficult (upon someone else), because that is also "considering oneself to be higher," (according to the Usooliyyeen). That's why we do not mean it according to the terminology of the people of Usool. Also, the intention is not simply al-Isti`laa (considering oneself to be higher than another), but rather, there must be ilzaam-ul-fi`l (making an action binding on someone else). So, it (amr) is not true except in the meaning of wujoob (making something binding or obligatory), not in the meaning of warning, or making something too difficult or impossible, etc.

(ويختص مراده بصيغة لازمة)

بيان لكون الأمر خاصاً، يعني يختص مراد الأمر – وهو الوجوب – بصيغة لازمة للمراد. والغرض منه بيان الإختصاص من الجانبين، أي لا يكون الأمر إلا للوجوب ولا يثبت الوجوب إلا من الأمر دون الفعل فيكون نفياً للإشتراؾ والترادؼ جميعاً. وذلك بأن يقال: إن دخول البقاء هنا على المختص على طريقة قولهم: "خصصت فلاناً بالذكر" فتكون الصيغة مختصصة بالوجوب دون الإباحة والندب وهذا نفي الإشتراك. ويكون معنى قوله: "لازمة" أن الصيغة لازمة للمراد ولا
The author says: "Its meaning (i.e. the meaning of *amr*) is restricted to the binding tense (a word or text that makes it binding, not an action)."

This is an explanation of why *amr* is *khaas*. What he means is that, the purpose of *amr* - which is *wujoob* (to make something binding) - only comes when there is a text (i.e. a word or saying) or tense that makes its binding. The objective of it is the explanation of being *khaas* from both sides, i.e. *amr* cannot be except for *wujoob*, and *wujoob* cannot come except from *amr*, not from a verb. Thus, *amr* itself precludes the possibility of *ishtiraak* (having more than one meaning) and *taraaduf* (having near-synonyms) both. That is by saying: the *baa’* here being added to the thing made *khaas*, like, for example, in the statement: خصصت فلاناً بالذكر (I specified so-and-so for mention.) The tense is specific for *wujoob* (being obligatory), not permissibility or recommendation, and this is a precluding of other meanings.

Thereafter, with regards to his statement of "binding": if it is taken to mean a reference to general binding, then that is also a precluding of any possibility of other meanings, because something cannot be "binding"
(malzoom) without a laazim (something that makes it binding), so the precluding of multiple meanings is not understood from it; thus, it must be taken to mean an equal binding, i.e. the meaning (of amr) cannot be found without a text (word, making it binding) nor can there be a text (giving amr) without a meaning (i.e. without something being binding as a result therefrom); thus, the preclusion of multiple meanings and near-synonyms is understood from this by way of implication. Thereafter, he (the author) explicitly precludes near-synonyms in terms of objective, saying: "So much so that an action cannot be a moojib (an obligator)." i.e. when the intended meaning (of the amr or command) is specific to the text (the word of amr), then an action of Nabi صلى الله عليه وسلم cannot make something waajib upon the Ummah except if he had continuity upon that action.

The author says: "(This is) contrary to some of the companions (i.e. followers) of Imaam ash-Shaafie [رحمة الله عليه]."

That is because they say: "The action of Nabi صلى الله عليه وسلم also acts as a moojib (obligator), either by being an amr (in itself), and every amr (command) is for wujoob, or because it partners verbal command in regards to the ruling of being waajib (obligatory)."
was specific to him, because in such cases there is consensus on it (such actions) not being a *moojib* (obligator).

The author says: "Because of the prevention from the fasting of *wisaal* (continuous fasting) and the removal of the sandals."

This is connected to his statement: "An action is not considered to be a *moojib* (obligator)."

One proof of ours (Ahnaaf) regarding this is Rasoolullah صلی الله عليه وسلم preventing Sahaabah from the fast of *wisaal* (continuous fast) and removing their sandals. It is narrated that Nabi صلی الله عليه وسلم used to fast continuously (i.e. without *iftaar*), so the Sahaabah started to do the same, so Nabi صلی الله عليه وسلم disapproved of them following him in the action of fasting continuously, and he said, "Who of you is like me? My Rabb gives me to eat and drink."

Meaning, "You (the Sahaabah) don't have the ability to fast continuously, night into day (without *iftaar*), but I have been given *Roohani* power to do
that from Allaah Ta`aala. I am given to eat by Him and I drink from (the cup of) Love (of Allaah), as one poet says:

"For the ardent seeker, Your Remembrance is the best of drinks; every drink besides it is like a mirage."

It is for this reason that you find those from the Ummah who strive hard (in the `Ibaadat of Allaah, a reference the author is making to some of the Awliyaa) fasting for forty (days at a time), making iftaar by just drinking a drop of water in order to avoid falling into the karaabah (that which is makroob, which is fasting continuously).

This ruling (makroob to fast continuously) applies to the fasts that are fardh and the fasts that are nafl, equally.

It is narrated that once, Nabi صلى الله عليه وسلم was once performing Salaah with the Sahaabah, and he removed his sandals, so they removed their sandals. Once the Salaah was complete he asked them, "What caused you to remove your sandals?" They said, "We saw you removing your sandals." He said, "Jibreel عليه السلام informed me that there was some impurity on them. When one of you comes to the Masjid, if he sees some impurity on his sandals, let him wipe them and then perform Salaah in them."

هذه تمسكات أبي حنيفة رحمه الله. أما الشافعي رحمه الله فقاؿ: تارة على سبيل التنزـ١ようですاة والسلام شغل عن أربع صلوات يوم الخندق فقضاهى
مرتبة وقال:
صلو كثيرة رآى أصلى أصلى
فجعل متابعة أفعاله لازمة لأمته

This is the view of Imaam Abu Haneefah رحمة الله عليه. As for Imaam ash-Shaafi`ee رحمة الله عليه, then he says - sometimes just speaking hypothetically - "An action is for wujoob just as an amr (command) is, (and the proof for this is) that Nabi صلى الله عليه وسلم was delayed from performing four Salaats on the day of the Battle of Khandaq, and later he performed qadhaa of all four at the same time. Thereafter he said, "Perform Salaah as you see me perform
Salaah." Thus, he made the following of his actions binding upon his Ummah.

فأجاب عنه المصنف رحمه الله بقوله:

والوجب استفيد بقوله عليه الصلاة والسلام: صلىوا كما رأيتموني أصليت، لا بأفعاله)

إذ لو كان الفعل موجباً لأنبغيه بمجرد رؤية الفعل ولم يحتاجوا إلى هذا القول أصلاً

وقال تارة على سبيل الترقي: إن الفعل قسم من الأمر لأن الأمر نوعان: قول وفعل. لأنه أطلق الله تعالى لفظ الأمر على قوله:

وَمَا أَمْرُ فِرْعَوْفَ بِرَشِيدٍ

أي فعله لأن القول لا يوصف برشيد وإنما يوصف بالسديد

فأجاب المصنف عنه بقوله:

(وسمي الفعل به لأنه سببه)

أي سمي الفعل بلفظ الأمر لأن الأمر سبب للفعل فيكون من باب المجاز وإنما الكلام في الحقيقة

ولما فرغ عن نفي التراث قصدًا شرع في نفي الإشتراء قصدًا فقال:

The author رحمه الله عليه responded to that by saying: "The aspect of it being waajib is derived from Nabi صلى الله عليه وسلم saying, "Perform Salaah the way you see me perform Salaah." The obligation comes from this (verbal command) of Nabi صلى الله عليه وسلم and not his actions. Because, had it been obligatory on account of action alone, then the Sahaabah would have followed him the moment they saw him do this action and there would have been no need for this statement (from Rasoolullaah صلى الله عليه وسلم) in the first place.
Imaam ash-Shaaf`ee also said sometimes, by way of raising (the argument, i.e. from a weaker argument to a stronger argument): "Action is a part of amr (command), because amr is of two types: qowl (verbal) and fi`l (action). This is because Allaah Ta`ala used the term "amr" (in the Qur'aan) to refer to an action:

}"And the amr (word) of Fir`own was no right guide."

Meaning, his action, because a qowl (word) is not described with the word "rasheed", but rather, for qowl (a word), it is described with "sadeed" (straight).

The author responds to that by saying: "A fi`l (action) is named (amr, sometimes) because it is the cause."

Meaning, (sometimes) an action is referred to by the term "amr" (command), because an amr (command) is the cause of the action being done, so (the action is termed amr) by way of majaaz (metaphor), but the discussion (here) is about the reality (i.e. in reality an action is not a command, though it may be termed as such metaphorically.)

After ending the discussion on precluding near-synonyms in terms of objective (of the amr), he now begins the discussion on the preclusion of multiple meanings in terms of the objective, so he says:

موجب الأمر

(وموجب الوجوب, لا الندب والإباحة والتوقف)

يعني أن موجب الأمر الوجوب فقط عند العامة, لا الندب كما ذهب إليه بعض, ولا الإباحة كما ذهب إليه بعض, ولا التوقف كما ذهب إليه بعض, ولا الاشتراك لفظاً أو معنى بين الثلاثة أو الاثنين كما ذهب إليه آخرون. ولم يذكره المصنف لأنه يفهم مما ذكره إلزاماً

What is Necessitated by Amr

The author says: "What is necessitated by it is wujoob (obligation), not recommendation, or permissibility, or tawaqquf (reservation)."
What he means is that, what is necessitated by a command (amr) is that the thing being ordered is waajib, according to the majority; not recommended like some say, or permissible like others say, or tawaqquf (reservation) like others say, nor multiplicity in word or meaning between three or two like others say. This has not been mentioned by the author because it is understood by necessity from what he has mentioned.

The people who say amr is for nadb (recommendation) say: "Amr is for talab (seeking), so it's necessary that the part of the verb therein be preponderant so that it can be sought (i.e. so that we can do what the verb is saying), and the nearest (meaning, i.e. the correct one) is that of nadb (recommendation). This is like the Aayah:

{"Give them such writing (of emancipation) if you know of goodness in them..."}

The people who hold the view that amr (command) is for ibaabah (permissibility), they say: "The meaning of talab (seeking) is that what is in it is permitted and not Haraam (prohibited), and thus its nearest meaning (correct meaning) is that of ibaabah (permissibility). This is like the Aayah:
"Then hunt."

The people who believe in doing *tawaqquf* (reservation), they say: "*Amr* is used for 16 different meanings, such as *wujoob* (obligation), *ibaabah* (permissibility), *nadb* (recommendation), *tabdeed* (warning), *ta’jeez* (to demonstrate the incapability of the one being commanded), *taskheer* (subjugating), and other than it. So, as long as there is no supporting evidence to show which is the intended meaning of the *amr*, it (the command) is not acted upon, but *tawaqquf* (reservation) is done until the intended meaning is known.

According to us (the Ahnaaf), *wujoob* (being obligatory) is the literal meaning of an *amr* (command), so it (the *amr*) is left upon its *mutlaq* (unrestricted) state so long as there is no supporting evidence opposing it. In the event of there being supporting evidence opposing it, it (the *amr*) will be judged according to that, based on the situation.

"(سوء كان بعد الحظر أو قبله)

متعلق بقوله: <وموجبه الوجوب> وردٌّ على من قال: إن الأمر بعد الحظر للإباحة وقبله للوجب

على حسب ما يقتضيه العقل والعادة كقوله تعالى:

وإذا خلتكم فاصطادوا

ونحن نقول: إن الوجب بعد الحظر أيضاً يستعمل في الإباحة كقوله تعالى:

فإذا السلم الأشهر الحرم فاضطروا المشركين حيث وجدتموهم

والإباحة في قوله تعالى:

وإذا خلتكم فاصطادوا

لم يفهم من الأمر بل من قوله تعالى:

أجل لكم الطيبات

51
The author says: "It is the same whether it (the amr) comes after bashr (a prohibition) or before it."

This is connected to his statement, "(Amr) necessitates wujoob (obligation)."

It is in reply to those who claim that when an amr (command) comes after prohibition, then it signifies ibaabah (permissibility), and if it comes before a prohibition, then it signifies wujoob (obligation), based on what is necessitated by the `aql (intellect) and `aadah (habit), as in the Aayah:

{"So when you are free (from ibraam), then hunt."} 

We (the Ahnaaf) say: (Amr intending) wujoob after the prohibition is used in the Qur'aan as well, as in the Aayah: 

{"So when the Sacred Months have passed, then kill the Mushrikeen wherever you find them..."} 

And ibaabah (permissibility) as in the Aayah: 

{"So when you are free (from ibraam), then hunt."} 

It is not understood from the amr (command), but rather, from the Aayah: 

{"The pure things have been made permissible for you."} 

And also, it is understood from the fact that the command of hunting occurred as a favour and benefit for the slaves (of Allaah Ta`alaa); were it to be jarid (compulsory), it would be a hardship upon them, so it is necessary that an amr (command) generally and unrestrictedly gives the meaning of wujoob (obligation), and it is only carried upon a different meaning (such as permissibility, or recommendation, etc.) if there are supporting evidences or metaphorical speech (to show that this is the case). 

(لانفاذ الخيرة عن الأمر بال أمر بالنص)
أي إننا قلنا أن موجه الوجوب لانتفاء الاختيار عن المأمورين المكلفين بالأمر بالنص وهو قوله تعالى:

وَمَا كَانَ لِلمُؤْمِنِينَ وَالْمُؤْمِنَاتِ إِذَا قَضَى اللهُ وَرَسُولُهُ أَمْرًا أَفْ يَكُوْنُ لَهُمُ الْخَيْرَةُ مِنْ أَمْرِيِمْ

أي إن حكم الله ورسوله بأمر فلا يكون المؤمن ولا مؤمنة أن يكون لهم الاختيار من أمرهما. أي إن شاؤوا قبلوا أمر وإن شاؤوا لم يقبلوا بل يجب علهيم الإيتمار بأمرهما. ولا يكون ذلك إلا في الوجوب.

وقيل: النص هو قوله تعالى:

مَا مَنْعَكَ أَفْ لاَ تَسْجُدَ إِذْ أَمَرْتُكَ

خطاباً لإبليس اللعين, أي ما بقي لك الاختيار بعد أن أمرتك, فلم تركت السجود؟

Thereafter, the author begins explaining the evidences for (the claim that) *amr* is for *wujoob*, so he says:

"(One proof is the fact that) the one who is commanded has no choice, (as is mentioned) in the *Nass* (of Qur'aan)."

Meaning, we (the Ahnaaf) say that *amr* necessitates *wujoob* because those who are commanded and who are bound by the *amr* (command), they lose any choice in the matter, as is derived from *Nass* (clear text of Qur'aan), which is the Aayah:

{"And it is not for any Mu'min or Mu'minan, when Allaah and His Rasool decree an Amr, that they should have a choice in their matter..."}

Because the meaning of that is, when Allaah and His Rasool صلى الله عليه وسلم issue an *Amr* (Command), then a Mu'min and Mu'minah have no choice in their matter. They can't choose whether to accept it or not to accept it. Rather, it is upon them to abide by it, and this would not be the case except if *amr* is for *wujoob*.

And it is said: the *Nass* (clear text) is the Aayah:
"What prevented you from making sajdah, when I commanded you?"

This was addressed at Iblees the accursed. Meaning, after I commanded you, there remained for you no choice in the matter, so why did you not perform sujood?

(واستحقاق الوعيد لئلك) عطف على قوله: "<إنفاء الخيرة> إنتفاء الخيرة:

إلى آخره، أي إنما قلنا إن موجه الواجب لاستحقاق الوعيد لئلك الأمر بالنص وهو قوله تعالى:

فليحذر الذين يخالفون عن أمر، أن يصبحوا فتنة أو يصبحوا عذابًا أليمًا أي فليحذر الذين يخالفون عن أمر الرسول عليه الصلاة والسلام وتركونه أن تصيبهم فتنة في الدنيا أو يصبحهم عذابًا أليمًا في الآخرة. وهذا الوعيد لا يكون إلا بترك الواجب. ولكن يرد عليه أنه موقف على أن يكون هذا الأمر أيضاً للواجب وهو ممنوع، وأنه لم لا يجوز أن تكون المخالفة على وجه الإنكار دون الترك؟

والجواب: أن سياق الكلام دال على أن هذا الأمر للواجب بدون احتياج إلى برハン ومصدرة على المطلوب. وأن المخالفة في استعمالهم إنما تطلق على ترك العمل به فتأمل

(ولدلالة الإجماع والمعقول) عطف على ما قلبه، وفي بعض النسخ: «ووكذا دلالة الإجماع والمعقول بدلان عليه»

فحينذ هو جملة مستقلة معطوفة على مضمون سابقها

The author says: "(And another proof is) that the one who abandons the amr becomes deserving of threat."
This is coupled to his statement: "(One proof is the fact that) the one who is commanded has no choice."

Meaning, we (the Ahnaaf) say the *amr* necessitates *wujoob* because of the fact that the person who leaves off acting upon the *amr* becomes deserving of threat, as is found in the *Nass* (of Qur'aan), like in the Aayah:

{"So let those who oppose his command beware, lest a fitnah overtakes them or a painful punishment."}

Meaning, let those who oppose and abandon the *amr* of Rasoolullaah صلى الله عليه وسلم beware lest some fitnah - (trial, tribulation) in the Dunyaa - afflicts them or a painful punishment overtakes them in the Aakhirah. This threat would not have come unless something *waajib* has been left off. However, some respond to this by saying that it is *mawqoof* (reserved; dependent) on whether this *amr* is also for *wujoob*, and it is prevented, and that, why is it not possible that the intended meaning of *mukhaalafah* (in this Aayah) can be "rejecting", rather than meaning "leaving it off"?

The answer is: the context (of the Aayah) points out that the *amr* is for *wujoob*, without the need for any (additional) evidence to prove this (is the intended meaning), and also, *mukbaalafab* in the usage (of the Arabs) refers is used in a *mutlaq* (unrestricted) way to refer to abandoning something, so reflect.

The author says: "And also, because *ijmaa`* (consensus) and the intellect points out to this (being the case)."

This is coupled to what is before it (i.e. other evidences to prove that *mukbaalafab* in this Aayah is a reference to abandoning, not rejecting). In some manuscripts it appears, "Similarly, the proofs of *ijmaa`* and intellect point out to it." In this case, it will be a separate sentence, coupled to the subject discussed before it (i.e. that *amr* is for *wujoob*).

وحاصل أن دلالة الإجماع تدل على أن الأمر للوجوب، لأنهم أجمعوا على أن كل من أراد أن يطلب فعلاً من أحد لا يطلب إلا بلفظ الأمر. والإجابة في الطلب هو الوجوب، والأصل في الإشراك والترادف فتعين أن موجب الوجوب. وإنما قال: "دلالة الإجماع" لأن نفس الإجماع لم يعتقد على أن موجب الوجوب لأنه مختلف فيه. بل إنما الإجماع منعقد على شيء يبدل عليه. وكذا الدليل المعقول يبدل على أن الأمر للوجوب، وهو أن تصاريف الأفعال كلها كالماضي
The summary of this is that, the *dalaat-ul-ijmaa* (what is derived from *ijmaa*) proves that *amr* is for *wujoob*, because they have *ijmaa* that, whoever seeks the performance of a certain action from another, he does not seek it from him except by using the form of *amr*, and the highest and most complete form of seeking (the performance of something) is *wujoob* (i.e. making it obligatory). Also, the default is the negation of multiplicity in meaning as well as near-synonyms, so it is established that it (*amr*) necessitates *wujoob*. The reason the author said "*dalaalat-ul-ijmaa*" (that which is derived from *ijmaa*, rather than saying *ijmaa*) is the fact that *ijmaa* was not concluded upon this that *amr* is for *wujoob*, because it is a matter that is *mukhtalaf feebi* (disagreed upon). Rather, there is *ijmaa* upon something which points out to it (therefore he says *dalaalat-ul-ijmaa*, or "what is derived from *ijmaa*").

Similarly, the proof of intellect points out to the fact that *amr* is for *wujoob*, because the different tenses of actions, whether past, future or present, all point out to a certain, specific meaning, so similarly, *amr* should also be pointing out to a certain, specific meaning, and that is *wujoob* (obligation).
This is not to establish *lughab* (language) on the basis of analogical deduction, but rather, to establish the fact that the default is the absence of multiplicity (in meaning). It has also been said that, it is understood intellectually that when a master gives a command (amr) to his servant, and the servant does not carry it out, the servant becomes deserving of punishment. If *amr* (command) was not for *wujoob* (obligation), then the servant would not have been deserving of punishment.

In the explanation of the *musoos* (texts) and intellect, other facets and reasonings have been mentioned, but I have omitted them for the sake of brevity.

Thereafter, the author posposes a question: "If the intended meaning of *amr* is not *wujoob*, then what is the ruling (of *amr*)?" So he says:

"If what is intended by it is permissibility or recommendation..."

Meaning, if the intended meaning of *amr* is permissibility or recommendation rather than obligation (*wujoob*), then it would be *mukhtalaf feebi* (disagreed upon).

He says: "It is said: It is a literal (meaning) because it is part of it."

Meaning, permissibility and recommendation also fall under the literal meaning of *amr*, because all of them are part of *wujoob* (obligation), and (in terms of *lughab*) part of something also acts as a deficient literal (of it), because *wujoob* refers to something that is permissible to do and prohibited to leave off. *Ibaahah* (permissibility) refers to something that is permissible to do and permissible to leave off. *Nadb* (recommendation) refers to something that is permissible to do and is preferred. Therefore, both of them (*ibaahah* and *nadb*) is used in part of the meaning of *wujoob*, and this is the meaning of them having a "deficient reality or literal state", a part of what is intended by the (actual) *baqeeqab* (literal), and that is the chosen (view) of Fakhr-ul-Islaam (i.e. Imaam al-Bazdawi رحمة الله عليه)

(وقيل لا، لأنه جاوز أصله)

(وَقِيل لَا، لَنَا جَازَ أَصْلُهُ)

(وَقِيل لَا، لَنَا جَازَ أَصْلُهُ)

أخير: إنه ليس بحقيقة حينئذ بل مجاز لأنه قد جاوز أصله وهو الوجوب. لأن الوجوب هو جوازم الفعل مع حركة الترك. والإباحة جوازم الفعل مع حوازم الترك. والنذب هو رححان الفعل مع حوازم الترك. فالحاح البين من نظر إلى الجنس والذي هو جوازم الفعل فقط ظن أنه مستعمل في
بعض معناه فيكون حقيقة قاصرة، ومن نظر إلى الجنس والفصل جميعاً ظن أن كلاً منهما معان متبادلة وأنواع على حدة فلا يكون إلا مجازاً. وأما تحقيق أن هذا الاختلاف في لفظ الأمر أو في صيغ الأمر فما ذكر في التلويح بما لا مزيد عليه

ثم لما فرغ المصنف رحمه الله عن بيان الموجب وحكمه أراد أن يبين أنه هل يحتمل التكرار أو لا؟ فقال:

(ولا يقتضي التكرار ولا يحتتمله)

أي لا يقتضي الأمر باعتبار الوجوب التكرار كما ذهب إليه قوم ولا يحتتمله كما ذهب إليه الشافعي رحمه الله

يعني إذا قيل مثلاً >صلوا< كان معناه إذا أفعلوا الصلاة مرة. ولا يدل على التكرار عندما أصلاً. وذهب قوم إلى أن موجه التكرار لأنه لما نزل الأمر بالحج قال أقرع بن حابس العامري هذا يا رسول الله أم للأبد؟

ففهم التكرار مع أنه كان من أهل اللسان. ثم لما علم أن فيه حرجاً انتشر أشكال عليه فسأل

The author says: "It's also been said that this is not the case, because then it (amr) would be exceeding its root."

Meaning, in such a case it would not be literal but rather, it would be metaphorical, because it would have exceeded its root or default, which is wujoob, because wujoob is the permissibility of an action with the prohibition of abandoning it; ibaabah (permissibility) is the permissibility of an action with the permissibility of abandoning it; nadd (recommendation) is the preference of performance of an action with the permissibility of abandoning it. So in summary, the one who looks at the jins and that which is the permissibility of an action only, he thinks that it can be used in some of its meaning and thus be a deficient literal. The one who looks at jins and fasl (separation) both, thinks that both are different meanings and separate types, so it cannot be except majaaz (metaphorical). As for the discussion on whether the difference of opinion comes from the word of amr itself or from the different (linguistic) forms of amr, then this is mentioned in at-Talweeb in greater detail.
Thereafter, after the author ended his discussion on explaining what is necessitated by *amr* and what is the ruling of *amr*, he now goes into the subject of whether *amr* carries the possibility of repetition or not? (i.e., when a command is given, does it refer to doing it over and over or will doing the *amr* even once suffice as having fulfilled it?)

He says: "It (*amr*) does not necessitate *takraar* (repetition) and does not carry the possibility for it."

Meaning, the *wujoob* of *amr* does not necessitate that *takraar* (repetition) is intended, as some people claimed, and it does not have the possibility for it, like Imaam ash-Shaafi`ee had (taken the view of). Meaning, when it is said, for example, "Perform Salaah," then the meaning is to perform Salaah just once and it does not point out to *takraar* (repetition), according to us (Ahnaaf), by default. Some people claimed that it necessitates *takraar* (repetition), because when the *Amr* (command) of Hajj was revealed, Hadhrat Aqra` ibn Haabis asked, "Is it only for this year of ours, Yaa Rasoolallaah, or for all time (i.e. every year)?" So, despite him being from the people of the language (i.e. an Arab), he understood *takraar* (repetition) from it (this *Amr*). When he knew that there would be great difficulty in it (i.e. it being *farib* upon a person to perform Hajj every single year of his life), it troubled him, so he asked concerning it.

Imaam ash-Shaafi`ee holds the view that *amr* has the *ibtimaal* (possibility) of *takraar* (repetition), because the command "Idhrīb" (Hit; strike), is a shortened form of: "I seek from you a strike (i.e. that you strike, or hit)." It is *nakirah* (indefinite), and when there is *nakirah* in affirmation, it becomes *khaas*; however, it still carries the possibility of *`aam* (being *`aam*, or general). So, it can be carried upon (*takraar*) if there is a supporting piece of evidence which it can attach to.

The difference between *moojib* (making obligatory) and *muhtamal* (carrying a possibility) is that *moojib* (i.e. an amr making something *waajib*) comes about even without any *niyyah* (intention), but *muhtamal* only comes about if there was a *niyyah* for it, and our proof will be mentioned later on.
The author says: "Regardless of whether it is connected to a *shart* (condition), or made *khaas* on account of a *wasf* (description), or whether it is not like that."

This is in response to some of the companions (i.e. followers) of Imaam ash-Shaafi`ee, because they hold the view that, when an *amr* (command) is connected to a *shart* (condition), like in the Aayah:

\[
\text{"And if you are in a state of janaabat (major impurity), then perform ghusl."}
\]

Or if it is made *khaas* on account of a *wasf* (description), like in the Aayah:

\[
\text{"The male thief and the female thief - cut off their hands..."}
\]

It gets *takraar* (repetition) if the *shart* (condition) or *wasf* (description) is repeated, because *ghusl* is repeated if *janaabab* (major impurity) is repeated. Cutting off (the hand) is repeated if theft is repeated.

According to us (Ahnaaf), whether or not it (*amr*) is attached to a *shart* (condition) or other than it, or whether or not it has been made *khaas* with a
wasf (description) or other than it, it is the same in that it does not point out to takraar (repetition) and does not carry the possibility of (takraar).

The author says: "But it applies to the least of its jins (species) and carries the possibility for all of it."

This is a follow-up from his statement, "And it does not carry the possibility of it." As though someone had said, "Why does amr not carry the possibility of takraar according to you (Ahnaaf), because in that case, how does the niyyah of three (talaqiq) be valid in the statement of a man (to his wife): "Divorce yourself"?

So he (the author) says: "Amr applies to the least of its jins, and that is the literal individual, and it carries the possibility of (applying to) all of its jins, and that is the legal (i.e. in terms of the laws) individual, i.e. the three divorces, not from the aspect of it being a number, but from the aspect of it being an individual, and (also) not from the aspect of it being its madlool (purport) but from the aspect of it being intended (manniyy). This has been implied by his statement: "So much so that, if he says to her (his wife), 'Divorce yourself,' only one (talaaq) will fall unless he had intended three."

That is because one (talaaq) is the literal individual, known with certainty, whereas three is the legal individual, having a possibility (of being the case).
The author says: "And the niyyah of two does not work (apply) except if the woman is a slave-girl."

Meaning, in the statement, "Divorce yourself," intending two (talaaqi) is not valid, because (two, in this case) is an absolute number; it is neither a literal individual (which is one) nor a legal individual (which is three). It is also not the purport of the word nor does it carry the possibility of it, except if the woman is a slave-girl, because in the case of a slave-girl, two divorces are like three in the case of a free woman. So, it is (then) one legal (divorce) which is like three in her case.

As for if he says (to his wife), "Divorce yourself twice." In this case, two talaqis will fall because now it will be a case of an explanation for the sake of taghyeer (changing) what came before it, not an explanation of tafseer (explaining) it, because "divorce" does not carry the possibility of two so that it can be an explanation for it.

Thereafter, the author رحمة الله عليه mentions a daleel (proof) regarding what is the chosen (view), so he says: "Because the tense of amr (command) is a
shortened form of seeking an action by the *masdar* (root noun), which is singular (individual)."

Meaning, *amr* does not necessitate *takraar* because it is a shortened form of seeking an action with the *masdar* (root noun), so you saying: "Hit; strike," is a shortened form of, "I seek from you (that you) strike (or hit)." And his saying, "Perform Salaah." is a shortened form of, "I seek from you (that you perform) Salaah." And his saying, "Divorce," is a shortened form of, "Carry out the action of divorce." And the *masdar* (root noun) from which the shortened forms (for *amr*) are derived, does not carry the possibility of (a particular) number.

The author says: "The meaning of being alone, singular, is used in the words of oneness."

Thus, the action which is derived from it is has greater right not to carry the possibility of number. By this, the evidence for the comprehensive principle has been completed.

Thereafter, the author says: "And that is (the case with) *fardiyyah* (singularity) and *jinsiyyah* (species), and dual is excluded from both of them."
This is an explanation of an example of something khaas, i.e. his statement, "Divorce yourself," because talaaq is the thing that is described with jinsiyyah (species) and al-fard al-bukmi (legal singular; individual), and the exclusion of dual. As for what is besides it, then no legal singular; individual is not in it except at the end of (one's) life.

The author says: "Those `Ibaadaat which are repeated, they are (repeated) because of the (repetition) of the causes, not become of the (repetition) of the orders (awaamir, plural of amr)."

This is an answer given in response to a hidden question posed to us, which is: amr does not necessitate takraar and does not carry the possibility of it, so then, for what reason are the `Ibaadaat such as Salaah, fasting, etc. repeated? (Why is it not that performing Salaat even once fulfills the amr of Salaah, and there is no reason to perform it anymore thereafter?) So he (the author) answers that by saying, "Those that are repeated from the `Ibaadaat, they (are repeated) not because of the orders (awaamir) but because of the causes (asbaab), because when the cause (sabab) is repeated, then that which is affected by the sabab (cause) repeats as well. Thus, whenever the time (of Salaah) is found, Salaah becomes waajib (because the sabab of Salaah is the time). Whenever Ramadhaan comes, fasting becomes waajib (because the sabab of fasting is Ramadhaan). Whenever a person comes into possession of the nisaab (certain amount of money), Zakaah becomes waajib (because the sabab is possession of the nisaab). For this reason, Hajj is not waajib except once (in the life of a person), because the (Ka`bah) is one; there is no repetition in it.
It is not to be said: "Waqt (the time) is the sabab for the wujoob (obligation, i.e. of Salaah) itself, and the amr is the sabab for the wujoob (obligation) of adaa (discharging it), so how can the sabab (cause) be independent from the amr?"

That is because we (the Ahnaaf) say: "Upon the realisation of every sabab (cause), the Amr (Command) repeats from Allaah Ta`aalaa (i.e. each time the sabab of Salaah is found, which is the time, the Command of Allaah Ta`aalaa to perform Salaah is repeated); thus, the repetition of the `Ibaadaat is on account of the repetition of the awaamir (commands) which are renewed, in terms of the law."

The author says: "According to Imaam ash-Shaafi`ee, because (amr) carries the possibility of takraar (repetition), the wife possesses (the ability) to divorce herself twice if the husband intended (that)."

This is an explanation of the disagreement of Imaam ash-Shaafi`ee with an absolute principle (of Hanafi Usool) in a way that incorporates disagreement in the aforementioned issue. Meaning, according to him, because every amr carries the possibility of takraar whether the amr comes from the Lawgiver (i.e. Allaah Ta`aalaa) or from anyone else, the woman possesses the (ability), in the event of the husband saying to her, "Divorce yourself," to divorce herself twice, if the husband intended that. But, if he had not intended that, or he only intended one (divorce), then she can only divorce herself once (issue one divorce upon herself).
Thereafter, the author, closely after mentioning the explanation of *amr* (command), he mentions the explanation of *ism al-faa’il* (the subject; doer), because of them both not carrying the possibility of *takraar* (repetition), so he says: "Similarly, *ism al-faa`il* points out to the *masdar* (root noun), linguistically, and does not carry the possibility of (a certain) number."

His statement, "Points out (to)," is an explanation of the aspect of resemblance, and "And it does not carry the possibility," is coupled to it. In some manuscripts it appears, "It does not carry the possibility (of)," without the *waaw* (and), so then it is the explanation of the aspect of resemblance. And his statement, "Points out (to)," occurs as *baal* (the condition, or state). Meaning, similarly *ism al-faa`il* does not carry the possibility of (a certain) number because of it pointing out to the *masdar* (root noun), linguistically, so it is a caution regarding the *ism al-faa`il* which does necessarily point out to it, like the statement, "You are divorced." That is outside of what we are (discussing), and its explanation will come (later on).

The author says: "So much so that, the intended meaning of the Aayat (mentioning) theft is a single theft, and by one action only one hand is cut off."

This is a branching off regarding the issue of *ism al-faa`il* not carrying the possibility of *takraar* (repetition), and a binding upon Imaam ash-Shaafiee رحمه الله regarding that (view) which he adopted.
The explanation of this is that, Imaam ash-Shaafi`ee said: When a thief steals for the first time, his right hand gets cut off. If he steals for a second time, his left foot gets cut off. If he steals for a third time, his left hand gets cut off. If he steals for a fourth time, his right foot gets cut off. The basis for this is the Hadeeth:

"Whosoever steals, cut it (a limb) off. If he returns (to stealing), cut it (a limb) off. If he returns (to stealing), cut it (a limb) off. If he returns (to stealing), cut it (a limb) off."

According to us (Ahnaaf), if the person steals for a third time, his left hand will not be cut off, but rather, he will be imprisoned forever (i.e. indefinitely) until he makes tawbah (repents). That is because the word saariq (thief) is an ism faa`il (active participle, i.e. a noun which gives the meaning of a doer), and it points out to the masdar (root noun) linguistically, and a masdar (root noun), only one is intended by it, or all, and all thefts (of a person) are not known until the end (of his) life; thus, one becomes the intended meaning, with certitude. And, by one action nothing is cut off except one hand. Also, the word "faqta`oo" (cut off, used in the Aayah and in the Hadeeth) points out to cutting, and that also does not carry the possibility of (a certain) number; thus, cutting off the left hand cannot be established from the Aayah.

It should not be said: "Then, it is necessary that the left leg shouldn't be cut off either, in the event of a second (theft)." Because we (the Ahnaaf) say: "The leg is not intended in the Aayah, so there is no harm for it being established through a different nass (referring to the Hadeeth quoted earlier, wherein "cutting off" is mentioned four times.)"

The hand is intended in the Aayah, and the right hand has specifically been meant; thus, it is not permissible to established (the cutting off) of the left hand on the basis of a khabr-e-waahid (solitary narration), because a khabr-e-
"waabid cannot be used to add onto (an Aayah of) the Kitaab (Qur’aan), because (after the right hand has been cut off) there no longer remains the defined place which has been defined by ijmaa’ (for cutting off in the case of theft, which is the right hand)."

This is contrary to the issue of flogging, because, every time a non-married individual commits zinaa, he gets flogged, because the body is always capable of being flogged.

After the author ended the explanation of takraar (repetition) and its absence, he now starts (a new discussion on) the division of wujoob (obligation), so he says:

 позволь пожертвовать в обряде жертвоприношения (преступление) и законодательство указывает, что одного и того же вина нет. Оно появляется по истечении определенного времени.

The author says: "The ruling of amr is two types: adaa, which is submitting the actual waajib (which has been made obligatory) by the amr (command)."

Meaning, what is established by amr (command), which is wujoob (obligation), falls into two types: the wujoob of adaa (discharging within the appointed time)) and the wujoob of qadhaa (discharging after the expiry of the appointed time).
So *adaa* refers to submitting (i.e. carrying out) the very thing which has been obligated by *amr* (command) in terms of responsibility, i.e. taking it out from non-existence into existence, in the time appointed for doing so.

This is the meaning of *tasleem* (submission, carrying out); otherwise, actions are submissions, and their submission cannot be imagined with an *amr*.

It has been mentioned in the *Usool* of Fakhr-ul-Islaam (i.e. Imaam al-Bazdawi) and other than him that, "Submitting the actual (thing) made *waajib* by the *amr*." This has been objected to by saying, the actual thing that is *waajib* is not (connected) with the command but rather, with a (certain) time. It is responded to by saying, his saying "with the *amr* (command)" is connected to "with submission (carrying out)", not with the *waajib* (obligation). For this reason, the author replaced his words "*nafs al-waajib*" (the *waajib* itself) with the words "*ain al-waajib*" (the specific thing that is *waajib*), so that it may be known that "*nafs al-waajib*" or "*ain al-waajib*" is a metaphor referring to carrying it out in its (appointed) time, and thus there is no need for adding the words "in its time", as some have added. Similarly, there is no need to add "to its rightful one" because his saying, "with the command" already points out that the *amr* is the thing that is rightful (to be done).
The author says: "And (the second type) is qadhaa, which is: submitting (or carrying out) a likeness of what which is waajib."

This is coupled to his statement, "adaa", i.e. the wnuoo of qadhaa, which is: submitting something which is a likeness of that which had been made waajib (obligatory) by the amr (command), not the very thing (that was waajib) itself. Meaning, carrying out a likeness of that waajib which had been waajib originally, (but submitting this likeness) in other than that time. It was necessary for him to restrict it with his saying, "from himself," so that the discharging of the Zhuhr of today (for example) may be excluded from being a qadbaa of the Zhuhr of yesterday, because it is not from it, but rather, both of them are for Allaah Ta`aalaa.

Qadbaa is changing a nafl (voluntary) which was rightful for him into the qadbaa which was due upon him. He (the author) did not restrict it with that because of how well-known it is and because it is the purport as known by necessity. As for the nafl, it only gets repeated (i.e. qadbaa is done of it) if it has become binding on account of commencement (i.e. when a person commences a nafl Salaah, for example, it now becomes binding on him, so if it breaks, he must repeat it.) Then, it no longer remains nafl but rather, it becomes waajib, but it is discharged even though it is not waajib.

Thus, it is necessary that the intended meaning of his statement, "ain al-waajib" (the specific thing made waajib) mean that which is affirmed, so that it may encompass that which is nafl (voluntary) as well.
The author says: "Sometimes, one of them (i.e. adaa and qadbaa) is used in place of the other, by way of metaphor, so much so that it is permissible to discharge (something) despite having made the niyyat of qadbaa, and vice-versa."

Meaning, both adaa and qadbaa are sometimes used in place of each other (terminology), by way of metaphor, so much so that, adaa can be done with the niyyat of qadbaa, such as by him saying, "I intend to make qadbaa of the Zhuhr of today." It is also permissible to made qadbaa with the niyyat of adaa, such as by him saying, "I intend to perform (discharge) the Zhuhr of yesterday."

واستعمال القضاء في الأداء كثير كقوله تعالى:

فإذا قضيت الصلاة فانشروا في الأرض

أي إذا أدت صلاة الجمعة، لأن الجمعة لا تقضي

ودلما ذهب فخر الإسلام إلى أن القضاء عام يستعمل في الأداء والقضاء جميعاً، لأنه عبارة عن فرغ الذمة وهو يحصل بهما فكان في معنى الحقيقة بخلاف الأداء فإنه بني عن شدة الرعاية وهو ليس إلا فيما الأداء كما قال الشاعر:

الذئب يأدو للغزال يأكله

أي يختلله وغلبه عليه

وأما إذا صام شعبان بظن أنه من رمضان فلا يجوز لأنه أداء قبل السبب وإن صام شوال بظن أنه من رمضان يجوز لا لأنه قضاء بني الأداء بل لأنه أداء بني القضاء وإنما الخطأ في ظنه وهو معفو

ثم إنهم اختلوا فيما بينهم إن سب القضاء هو الذي كان سبباً للأداء. أم لا بد من سب على حدة؟ فيه المصنف رحمه الله بالقوله:

(والقضاء يجب بما يجب به الأداء عند المحققين خلافاً للبعض)

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Many times, *qadhaa* is used in the meaning of *adaa*, like in the Aayah:

"So when the Salaah is completed (qudhiyat), then spread out in the land..."

Meaning, when the Salaat of Jumu`ah is complete, because there is no *qadhaa* of Jumu`ah (thus, though the word-form of *qadhaa* is used in the Aayah, it is used in the meaning of *adaa*).

For this reason, Fakhr-ul-Islaam (Imaam al-Bazdawi) held the view that *qadhaa* is `aam (general), encompassing both *adaa* and *qadhaa*, because it is a term used to refer to discharging one's responsibility, and that is achieved through both (*adaa* and *qadhaa*), so it is in the literal meaning different to *adaa*, because it (*adaa*) informs of (i.e. conveys the meaning of) great caution and care being taken (in fulfillment), and this is not (found) except in *adaa* (i.e. because in *qadhaa*, it is being carried out after the expiry of the appointed time, so of course this person had not taken "great care and consideration", hence it is different to the literal connotation of *adaa*.)

Like the poet says:

"The wolf deceives the gazelle, so that he can eat it."

(The word used here, "*ya'doo*", is from *adaa*, and here the literal connotation is being meant, which is that of taking great care, caution, consideration. So, the wolf exercises great caution and care with regards to the gazelle, when hunting it, to eat it.)

Meaning, it deceives it and overpowers it.

If a person fasts in Sha`baan thinking it to be from Ramadhaan, it is not permissible because that would be *adaa* of something before the *sabab* (cause) has come about. However, if a person fasts in Shawwaal thinking it to be Ramadhaan, it is permissible, not because it is *qadhaa* with the *niyyah* of *adaa*, but because it is *adaa* with the *niyyah* of *qadhaa*. The error is in his thinking, and he is excused.

Thereafter, they differed among themselves regarding whether the *sabab* of *qadhaa* is the same thing that was the *sabab* of *adaa*, or is there a need that it has a separate *sabab*? The author رحمة الله عليه clarifies that by saying:

"*Qadhaa* becomes *waqjib* by the very same thing that makes *adaa* *waqjib*, according to the verifiers, contrary to the opinion of some."
أي القضاء يجب بالسبب الذي يجب به الأداء عند المحققين من عامة الحنفية، خلافاً للفريق العراقيين من مشايخنا. وعامة أصحاب الشافعي فإنهم يقولون: لا بد للقضاء من سبب جديد سواً سبب الأداء. والمراد بهذا السبب الموجب للأداء، لا السبب المعروف اعتى الوقت.

وحافل الخلاف يرجع إلى أن عندنا النص الموجب للأداء وهو قوله تعالى:

أَقِيْمُوا الصَّلاَةَ

وقوله تعالى:

كُتِبَ عَلَيْكُمُ الصِّيَاـُ

وبيان عليه الصلاة والسلام:

مَنْ نَاـَ عَنْ صَلاَةٍ أَوْ نَسِيػَهَا فػَلْيُصَلِّهَا إِذَا ذَكَرَىَا فَإِفَّ ذَلِكَ وَقػْتُهَا

وقوله تعالى:

فَمَنْ كَافَ مِنْكُمْ مَرِيْضاً أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِّنْ أَيَّاـٍ أُخَرَ

بل وإنما وردنا للتنبيه على أن الأداء باقت في ذمتك بالنصين السابقين لم يسقط بالفوات.

Meaning, qadhaa becomes waajib by the same sabab which had made adaa waajib, according to the verifiers from the majority of the Hanafiyyah, contrary to the Iraqis from our Mashaayikh.

The majority of the companions of Imaam ash-Shaafi`ee say, "There is a need for qadhaa to have a new sabab other than the sabab of adaa." The meaning of this sabab is the nass (clear text) which made adaa waajib, not the well-known sabab, which is waqt (time).

The summary of the disagreement goes to the issue that according to us (Ahnaaf), the nass (clear text) which makes adaa waajib, which is the Aayah:
"Establish Salaah..."

And the Aayah:

"Fasting has been prescribed upon you..."

Point out specifically to the wujoob (obligation) of qadbaa (as well), leaving no need for a new nass that necessitates qadbaa, and that is the Hadeeth:

"Whoever oversleeps for a Salaah or forgets it, he must perform it when he remembers it, for that is its waqt (time)."

And the Aayah:

"Whosoever among you is sick or on a journey, the same number (of days which one did not fast must be made up) from other days..."

Rather, they (that Aayah and Hadeeth) are there for tanbeeb (warning and to draw attention to the fact that) the adaa still remains a responsibility upon you, by the two nass (clear texts) which preceded, and (the obligation) has not fallen away on account of missing (them).

Because, Salaah and Sawm (fasting) remaining (obligatory upon him) is because he is the ability to (carry out) the like of it. That there is no likeness and compensation for missing out the virtuous (i.e. appointed) time, because
it is not possible to do so, is a matter understood by the intellect. We count
the ruling of *qadhaa* from those matters in which there has come no *nass*
(clear text), but it is vowed, from Salaah, fasting and I`tikaaf.

According to Imaam ash-Shaafi`ee, it is necessary that *qadhaa*
should have a new *nass* (clear text) which makes it *waqib* (obligatory) other
than the *nass* for *adaa*. Thus, according to him, *qadhaa* of Salaah and fasting
is based on the Hadeeth:

"Whosoever oversleeps for a Salaah or forgets it, he must perform it when
he remembers it, for that is its *waqt* (time)."

And the Aayah:

{"*W*hosoever among you is sick or on a journey, the same number (of days which one did
not fast must be made up) from other days..."*

Because there is no *nass* concerning it, *qadhaa* is established on account of*
tafveet* (neglecting the appointed time until it expires), and this takes the
place of (specific) *nass* for *qadhaa*. The fruits of the difference between us
(Ahnaaf) and him (Imaam ash-Shaafi`ee) does not appear except in the issue
of *fawaat* (expiration of the appointed time); according to us, in the case of
*fawaat* (expiration of the appointed time), *qadhaa* compensates for it, whilst
according to him, it does not.
It is also said: *Fawaat* (expiration of the appointed time) takes the place of *nass*, as *tafweet* (missing the appointed time on account of neglect), so the fruits of the difference do not arise except when it comes to deriving (rulings). According to us, it is *waajib* in all (circumstances), on the basis of the previous *nass* (clear text). According to him, it is *waajib* on the basis of new *nass*, or with expiration of the time or *tafweet*.

*Qadhaa* on a journey of *Salaah* missed whilst at home (will be) four *raka`aat*. *Qadhaa* whilst at home of *Salaah* missed during a journey (will be) two *raka`aat*. *Qadhaa* of an audible *Salaah* during the day will be audible. *Qadhaa* of a silent *Salaah* during the night will be silent and this strengthens what we had mentioned.

The healthy person performing *qadhaa* missed during sickness in the form of the *Salaah* of a health person (i.e. standing, not sitting), and the sick person performing *qadhaa* of *Salaah* missed during health in the form of the *Salaah* of a sick person (i.e. sitting, or laying, even though the Salaats being made *qadhaa* of, at that time he had still been healthy,) this strengthens what he (Imaam ash-Shaafi`ee) said.

Thereafter, there is a well-known question which they pose to us, and that is: if a person takes a vow that he will perform *I`tikaaf* for the duration of the month of Ramadhaan, but then he fasts and does not perform *I`tikaaf* on account of a sickness which prevents him from doing so, he will not make *qadhaa* of that *I`tikaaf* in the following year's Ramadhaan, but rather, he will perform the *qadhaa* (of that *I`tikaaf*) during an intended fast, which is a *nafl* (optional) fast. Now, if *qadhaa* becomes *waajib* on account of the very same *sabab* that had made *adaa* *waajib*, which is the Aayah:
"Let them fulfill their oaths..."

Then, it would have been necessary that performing qadhaa (of the I`tikaaf) during the following year's Ramadhaan should be valid, just as how adaad (of it) during the first Ramadhaan was valid, as is the Madh-hab of Imaam Zufar رحمه الله عليه, or that the qadhaa falls away entirely on account of the inability to fast which is its shart (condition), as is the Madh-hab of Imaam Abu Yusuf رحمه الله عليه.

Thus, it becomes known that the sabab (cause) behind qadhaa is tafweet (deliberate neglecting of the time until it expires), and tafweet is unrestricted from time, so it transfers to completion and that is an intended fast. So, the author responds to that by saying:
"As for the case of a person vowing to perform I`tikaaf for the duration of the month of Ramadhaan, but he fasts and does not perform I`tikaaf, then it becomes waajib upon him to perform qadbaa through an intended fast, for that causes the return of the shart (for I`tikaaf) to it, making it complete, not because qadbaa becomes waajib for a different sabab (cause)."

Meaning, in the scenario of a person vowing to make I`tikaaf this coming Ramadhaan, but then he does not do so become of some illness preventing him, qadbaa becomes waajib with an intended fast - which is a nafl fast - because that brings back the shart (condition) for (the validity of) I`tikaaf being complete, which is a nafl fast, not because qadbaa becomes waajib for a different sabab (clause) as you claim.

The explanation of this is that, I`tikaaf is invalid unless it is accompanied by fasting. So, if a person vows to perform I`tikaaf then he has vowed to fast; thus, it is necessary that first an intended fast becomes waajib upon him, simply by having intended to perform I`tikaaf, but the honour of the present Ramadhaan opposes it, because `Ibaadah performed during Ramadhaan is more virtuous than `Ibaadah performed in (any other month), so we move from the original intended fast to the fast of Ramadhaan, because of this opposing honour. Because he missed out the honour of Ramadhaan, the fast returns to its complete state, and that is the original, intended fast, meaning, a nafl (optional) fast, so it is as though a Command has come from Allaah Ta`alaa saying, "Fast a nafl (fast) and perform I`tikaaf therein."

Life until the second Ramadhaan is doubtful (i.e. unknown whether the person will live that long), because it is a long time, and the possibility of living or dying (before then) is equal (in likelihood).
But, if the person does not perform an intended fast (i.e. a nafl fast), and then the second Ramadhaan arrives, the Ruling of Allaah Ta`aalaa will not transfer to this second Ramadhaan.

He said, "So he fasts but does not perform I`tikaaf", because, if he does not fast on account of some preventative sickness, then in that case, it is permissible to made qadhaa of the I`tikaaf in (another) Ramadhaan altogether.

Thereafter, the author becomes explaining the types of adaa and qadhaa, so he says:

"Adaa is of different types:

1) Kaamil (complete).
2) Qaasir (deficient).
3) *Shabeeb bil-Qadhaa* (resembling *qadhaa*).

There is some laxity in this division (by the author), because the types (of *adaa*) are not equal among themselves, so he should have said: "*Adaa* is of (different) types: pure *adaa*, which is two types: *kaamil* (complete) and *qaasir* (deficient), and another (type of) *adaa* which is *shabeeb bil-qadhaa* (similar to *qadhaa*)."

The meaning of pure *adaa* is that *adaa* (discharge) in which there is no resemblance to *qadhaa* whatsoever, neither from the aspect of the changing of time nor from the aspect of the ramifications. The meaning of *shabeeb bil-qadhaa* is that form of *adaa* in which there is a resemblance to *qadhaa* from the aspect of its ramifications and necessitation. The meaning of (*adaa*) *kaamil* (complete discharge) is that type of *adaa* which is discharged according to the way it has been legislated in the Sharee`ah, and the meaning of (adaa) *qaasir* (deficient discharge) is that type of *adaa* which is not so (i.e. hasn't been discharged in the manner the Sharee`ah has legislated).

The author says: "Like Salaat in Jamaa`ah."

This is an example of *adaa*-e-*kaamil* (perfect discharging of the duty), because this is *adaa* (discharging of the duty) in the way it has been legislated, because Salaat has only been legislated in Jamaa`ah, because Jibreel عليه السلام taught Rasoolullaah صلی الله عليه وسلم (the Salaah in the form of) Jamaa`ah on both days.

The author says: "And Salaat performed individually."

This is an example of *adaa*-e-*qaasir* (deficient discharge), because it is *adaa* in a way contrary to how it was legislated. For this reason, the obligation of *jabr* (audible recitation) falls away (in the case of audible Salaah) for the one (performing *qadbaa*) individually (i.e. even though Fajr, Maghrib, `Ishaa are *jabri* (audible) Salaats, when a person performs them individually as *qadbaa*, he will not recite audibly).
The author says: "And the action of the one who catches up to the Imaam after the Imaam has completed (the Salaah), but its (state of being) fardh has not changed on account of having the niyyah of staying."

This is an example the author is giving of shabeeb bil-qadhaa (a discharging that resembles qadhaa).

The laabiq (one who catches up) mentioned here by the author is the one who begins the Salaah with the Imaam from the takbeer-e-tabreemah, but then this person's wudboo breaks, so he goes to perform wudboo and then completes the remainder of the Salaat after the completion of the Imaam. This type of itmaam (completion), it is adaa from the aspect of it being done within the appointed time, but it resembles qadhaa from the aspect of it not being discharged in the way it had become binding. Because it has the meaning of adaa from the aspect of origin (i.e. starting with the Imaam, in the appointed time) but the meaning of qadhaa from the aspect of following (i.e. finishing the remainder after the completion of the Imaam), it was termed adaa shabeeb bil-qadhaa, and it was not termed qadhaa shabeeb bil-adaa (qadhaa resembling adaa).
The fruits of it being *adaa* is clear; for this reason, there is no objection to it. The fruits of it being (termed) *shabeeb bil-qadhaa* is that its state as being *fardh* had not changed because he had the intention of remaining (to complete it), such as by this *laabiq* (one who catches up with the Imaam) being a *musaaafir* and he is making Salaah behind another musaaafir (like himself), and then his *wudhoo* breaks, so he returns to his city to perform *wudhoo*, or he makes intention for *iqamah* (staying) in that place, then he comes back (from making *wudhoo*) after the Imaam has completed the Salaah, but he didn’t speak to anyone (during this time), so he begins making *itmaam* (completion) of the Salaah (that had broken), so he doesn’t complete it as four *raka’aat* but rather, he performs only two, like how if it had been a pure *qadhaa*, its state of being *fardh* does not change by the *niyyat* of *iqamah* (staying), so the same is the case here. But, if he was not performing Salaah behind a *musaaafir*, but rather, behind a *muqeem* (resident of that area), or the Imaam had not yet completed the Salaah, or he (the person whose *wudhoo* broke) speaks and then renews (his Salaah), or if this was the case with a *masbooq* (one who catches the Imaam after the first *rukoo`, or in the first *rukoo`*) and not a *laabiq* (one who had caught *takbeer-e-tabreemaab* but during the Salaah his *wudhoo* breaks), then its state of *fardh* changes to four *raka`aat* by the *niyyat* of *iqamah* (staying).

Thereafter, these three categories, as they continue when it comes to the *Huqooq* (Rights) of Allaah Ta`alaa, they continue when it comes to the rights of the bondsmen (of Allaah Ta`alaa), so the author says:

(ومنه رد عين المغصوب)

أي ومن أنواع الأداء رد عين الشيء الذي غصب على الوصف الذي غصبو إلى المالك بدون أن يكون المغصوب مشغولاً بالجناية أو بالدين, وبدون أن يكون ناقضاً بنقصان حسي. فهذا نظير الأداء الكامل, لأنه أداء على الوصف الذي غصب من غير فتور, ومتنه تسليم عين المبيع إلى المشتري. وتسليم بدل الصرف والمسلم فيه إلى على الوصف الذي وقع عليه العقد

(ورده مشغولاً بالجناية)

نظر للأداء القاصر, أي رد الشيء المغصوب حال كونه مشغولاً بالجناية أو بالدين بأن غصب عبدأ فارغاً من الدين والجناية ثم لحقه الدين أو الجناية في يد الفاصب. ومتنه تسليم المبيع حال
The author says: "And from it is returning the item that was looted."

Meaning, from the types of adaa (discharging) is (a person) returning the very thing which he had looted, exactly as it had been (at the time of being looted), to the possession (of the original owner), without that looted item having any felonies or debt (such as if what was looted was a slave), and without it having any perceptible faults. This, then, is an example of adaa-e-kaamil (perfect discharging), because it is discharging (returning the item) in the same condition in which it had been looted without any weakness. An example of this is handing over the purchased item to the seller, and handing over (the item agreed upon) in a surf (currency exchange) transaction or muslam feeh (advanced payment) transaction, in the manner agreed upon in the contract.

The author says: "And returning it burdened with a felony."

This is an example of adaa-e-qaasir (deficient discharge), i.e. a person returns the looted item (in this case, a slave) in the condition that now it has a felony or debt, such as by having looted a slave (from the master) who had no debt or felony, and then, whilst the slave was in the possession of the looter, it acquired a debt or felony. An example of it is handing over the purchased item in the state that it has a felony or debt or sickness. In all of these cases, if the looted item (a slave, in this case) or purchased item perishes in the hand of the (original) owner through a heavenly affliction (i.e. an affliction sent down by Allaah Ta`ala), then the looter and the seller are exempt from responsibility, because it is adaa.
If the (original) owner gives it to the person owning the felony (i.e. the person whom the felony was committed against), or a sale in debt, then the original owner gets the value back from the looter and the buyer gets a refund from the seller.

The author says: "And granting mahr to a slave of another, and handing him over after purchasing."

This is an example of adaa shabeeb bit-qadbaa (resembling qadbaa). Meaning, if a man gives mahr to a slave of another in order to marry his wife, and then he gives him to her after the purchasing, then it is adaa from the aspect of him having handed over the slave agreed upon in the contract, and it is shabeeb bit-qadbaa from the fact that a change in ownership necessitates a change in the actual item, legally.

So if the slave was owned by the owner, it is a different person. If he (the slave) was purchased by the husband, he is a different person. When he hands him over to her, he is a different person. The proof in this issue is that Rasoolullaah صلی الله عليه وسلم once visited Hadhrat Bareerah رضی الله عنها, so
she presented some dates, but meat was cooking in the pot. Rasoolullah صلی الله علیه و سلم asked her, "Won't you give us a portion of the meat?" She said: "Yaa Rasoolallah, it is meat that was given to me as *sadaqah* (charity)." So Rasoolullah صلی الله علیه و سلم said, "For you it is *sadaqah*, but for us it is a gift."

Meaning, when you take it from the owner, it is *sadaqah* (charity) for you, and when you give it to us, it becomes a gift for us. Thus, it is known (from this) that a change in ownership necessitates a change in the item itself (or individual himself/herself). Based on this, many rulings are derived. The author says:

"So much so that, she is forced to accept."

This is a branching off from the issue of it being *adaa*. What he means is that, the woman is forced to accept that slave that was given *mahr*, after the handing over. This is from the sign of it being *adaa*. This is contrary to the case where a person sells a slave and another person becomes entitled to the slave, and now the original seller purchases it back from the entitled one (who now owns the slave), because he (the entitled one) is not forced to hand it over to the buyer, because, by *istihqaaq* (entitlement), it is clear that the (validity) of the sale is hinged upon the permission of the owner. If he does not permit it, it is invalid and dissolves, contrary to *nikaah* (marriage), because there, it does not dissolve by the entitlement of *mahr* (dowry) or by its absence.
The author says:

"And his freeing (of the slave) will be carried out (i.e. valid) but not hers."

This is another branching off with regards to the issue of it being shabeeb bil-qadhaa (resembling qadhaa), and what he means is that, if the husband frees the slave before handing him over to the woman, it is carried out (i.e. it is valid) but not so if the woman frees him, and the reason behind this is that the woman does not possess him except after he is handed over to her. Prior to the handing over, he is in the possession of the husband, just as how prior to a purchase being made, the item is in the possession of another (i.e. the seller).

Because the being of the slave is present in both cases, and the description of slavery is different in both cases, it is counted as adaa shabeeb bil-qadhaa, and it is not counted as qadhaa shabeeb bil-adaa, on account of taking into consideration the being and origin.

After the author completed the explanation of the types of adaa, he now begins the division of the types of qadhaa, so he says:

"Qadhaa is of different types, with a likeness that can be understood by the intellect and with a likeness that cannot be understood by the intellect, and (another type) that is in the meaning of adaa."
There is laxity in this division as well, and it is as though it was said: "Qadhāa is of different types:

1) Pure qadhāa, and that is either with a likeness that can be understood by the intellect or by a likeness that cannot be understood by the intellect.
2) Qadhāa that is in the meaning of adāa."

What he means by pure qadhāa is that qadhāa which is not in the meaning of adāa originally, not literally/physically and not legally, and that (qadhāa) which is in the meaning of adāa is the opposite of it.

The meaning of a likeness that can be understood by the intellect is that its similarity can be understood by the intellect without looking towards the Sharee`ah, and the meaning of a likeness that cannot be understood by the intellect is that likeness, the similarity of which can only be understood from the Sharee`ah and the intellect is incapable of comprehending its modality, not that the intellect contradicts it.

وعلى الذين يُطْهُرُونَ فِي نَفْسِ طَعَامٍ مَسْكِينٍ
This qadhaa requires a new *sabab* (cause), according to consensus. The difference of opinion is only in the issue of a likeness that is not understood by the intellect.

The author says: "Like (*qadhaa*) of fasting (i.e. a missed fast) with fasting."

This is an example of *qadhaa* that has a likeness that is intellectually understood, i.e. like *qadhaa* of a missed fast by fasting. This is a matter understood by the intellect, because the *waajib* (obligation) does not fall away from the responsibility of the person except with *adaa* (discharging), or by the falling away of the person possessing the right, and as long as either of the two is not found, it remains in his responsibility.

The author says: "And giving *fidyah* (monetary compensation) for it."

This is an example of *qadhaa* with a likeness which cannot be understood by the intellect, because *fidyah* is opposite to fasting; the intellect does not comprehend it, because physically there is no similarity between the two (acts), from the apparent, because *sawm* (fasting) is about starving the *nafs* whereas *fidyah* is about satiating. And this *fidyah* is, for each day (that was missed), half a *saa* of wheat, or flour, or fine flour, or raisins, or a *saa* of dates, or barley for the very old man who is incapable of fasting, because of the Aayah:

{"And upon those who are capable of it, (there is) fidyah; the (feeding) of a miskeen (poor person)..."}

Based on the fact that the word "*laa*" (not) is hidden (in this Aayah), i.e. "upon those who are not capable of (fasting), or that the *hamzab* in it is for the meaning of "snatching", i.e. snatches away the ability, to point out to the very old man. As for if it is carried upon the literal, then it is *mansookh* (abrogated) according to what has been said: in the beginning of Islam, a person capable of fasting was given the choice between either fasting of
giving *fidyah*, and thereafter it was abrogated in stages, as I have written in *at-Tafseer al-Ahmadi*.

The author says: "And making *qadbaa* of the (missed) *takbeeraat* of `Eid during *rukoo`."
so the status of each one will be considered according to what is possible. As for the raising of the hands in the *takbeerat* and the placing of the hands on the knees in *rukoo*’, then both of these are Sunnah, so one will not be left for the sake of the other.

This is *qadbaa* from the aspect of being, because its place is *qiyaam* (standing) before *rukoo*’, and that has already been missed. But, it is *shabbeh bil-adaa* (resembling *adaa*) because *rukoo*’ resembles *qiyaam*, because the bottom half (of the person) remains on its state (i.e. standing), and because the one who catches up to the Imaam in *rukoo*’ has caught the *rak’ab* with all of its parts, from *qiyaam*, and *qiraa’ab* (recitation), in apportioning, so it is more precautionous that he comes with it (i.e. the *takbeerat* that were missed) in it (the *rukoo*’). According to Imaam Abu Yusuf رحمه الله عليه, there is no *qadbaa* for the missed *takbeerat* in *rukoo*’, because its place has already been missed, so there is no *qadbaa* for it just as there is no *qadbaa* for the *qunoot* and *qiraa’ab* which was missed.

The author says: "And the obligation of *fidyah* for (missed) Salaah, as a precaution."

This is a response given to a hidden question, which is:

*Fidyah*, in fasting, for the very old man, because it is established from nass and not understood by the intellect, it is necessary that you restrict yourselves to it and do not make *qiyaas* (analogical deductions) on it regarding the one who dies and upon him there are (missed) Salaats, because you say: "If he dies and there are missed Salaats upon him, and he gives *wasiyyah* (bequest) for *fidyah* (for those missed Salaats), it is *waajib* on the heir to make *fidyah* on behalf of each missed Salaat, according to the most authentic view. So, the author responds by saying that giving *fidyah* for missed Salaats is not done as *qiyaas* of (the issue of giving *fidyah* for missed fasts), but rather, it is done out of precaution.
والمسائل القياسية لا تتعلق بالمشيئة قط، كما إذا تطوع به وارث في قضاء الصوم من غير إياض
نرجوا القبول منه إن شاء الله، فكذا هذا
(كالتصدّق بالقيمة عند فوات أيام النكحة)

أي كوجوب التصدّق بقيمة الشاة إن نذرها الفقير، أو اشترى واشتلكها، أو بين الشاة إن بقيت
حية عند فوات أيام النكحة أيضاً للاحتياط كالنفدية للصلاة. فهو يشبه بالمسالة المتقدمة.
وجواب عن سؤال مقدر تقريره: إن ما لا يعقل شرعاً لا يكون له قضاء وخلف عند القوات،
والنكحة أي إراقة الدم في أيام النحر غير معقول لأنه إلفال الحيوان فينغي أن لا يجوز
قضاءها بالتصدّق بين الشاة أو بالقيمة بعد فوات أيامها

فأجاب بأن وجوه التصدّق بالقيمة أو بالشاة بعد فوات الأيام للإحتياط لا للقضاء

And that is because the *nass* (clear text) regarding *sawm* (fasting) carries the
possibility of being *makhsoos* (exclusive) to fasting and it also carries the
possibility of possessing a general *`illab* (reason) which is found in Salaah (as
well), i.e. that of incapability. Salaah is on par with fasting; rather, it is greater
than it in status. Thus, we commanded the giving of *fidyah* from the side of
(missed) Salaah. If it compensates for it by Allaah Ta`alaa, well and good,
and if not, then he (the one who gave the *fidyah*) will still have the reward of
*sadaqah* (charity). For this reason, Imaam Muhammad said in az-Ziyaadaat:
"It will suffice him (for it), *In Shaa Allaahu Ta`alaa* (if Allaah Ta`alaa
wills)."

*Masaal'il* based on *qiyaas* are never attached to *Masbee'ab* (Will). Just as, if the
heir voluntarily (gives *fidyab*) as *qadbaa* of the (missed fasts of the deceased)
without (the deceased) having made any bequest, we hope it will be accepted
from him, *In Shaa Allaah*, so it is the same here.

The author says: "Like giving *sadaqah* with the value, in the event of missing
the days of slaughter."

Meaning, like the obligation of giving in charity the value of a sheep if a
poor person had taken a vow (to slaughter) and thereafter it perishes (before
being slaughtered), or by giving a sheep itself if it is still alive after the
(appointed) days of slaughtering, as a precautionary measure, the same as
giving *fidyah* for (missed) Salaah. So, it resembles the previous *mas'alab*, and it
is an answer given in response to a hidden question, which is: "That which cannot be understood by the intellect, there is no qadhaa and substitute for it if it is missed, and slaughtering, i.e. the shedding of blood in the days of nahr (sacrifice) is not understood by the intellect, because it is a ruining of the animal; thus, it is appropriate that there be no qadhaa for it by means of giving sadaqah with the sheep itself or with its value if it (slaughtering) is missed during its (appointed) days."

So, the author responds by saying that the obligation of giving as sadaqah the value of the sheep or the sheep itself after missing (slaughtering) in the appointed days is as a precautionary measure, not as qadhaa.

And that is because slaughtering in its appointed days carries the possibility of being the asl (asl here meaning the original ruling) in itself and it also carries the possibility of being a substitute, such as by giving in sadaqah the actual sheep or its value being the real asl (the original ruling), but the ruling changed to that of slaughtering because of an extenuating factor, which is that of dhiyaaafah (being a guest), because in these days, people are the guests of Allaah Ta’alaa, and when being a guest, there must be the purest of food, and the purest of food to Allaah is meat which is slaughtered.
(according to the Sharee`ah) and which has been shed of blood, so that the first (meal) people partake of (on these days) is from the food of noble food of dhiyaafah. So, as long as these days are still present (have not passed yet), we say that slaughtering is the *asl* (original ruling) and we act according to the texts, and and when the days have passed, we say that the *asl* (original ruling) is that of giving in charity either the sheep itself or the value of the sheep, and we rule accordingly.

Then, when the next year arrives, we do not move from this ruling, and we do not say that *qadhaa* is necessary because of what had been missed in the first year.

Thereafter, after the author *رحمة الله عليه* finished explaining the types of *qadhaa* when it comes to the *Huqooq* (Rights) of Allaah Ta`aala, he now begins a discussion on the types of qadhaa when it comes to the *Huqooq* (rights) of the bondsmen (of Allaah Ta`aala), so he says:

"And from it is: compensating for the looted item with its likeness, and that is the first option (i.e. if it can be compensated for with the likeness of the original, another option will not be chosen), or with the value."

Meaning, from the types of *qadhaa* is that of compensating for the looted item with its likeness, in the case of him having looted something but then it is destroyed, and he finds a likeness of it among the people. Or (compensating) with the value in those things which do not have a likeness, or which have a likeness but is not available among the people (i.e. he cannot acquire it).
This is an example of *qadbaa* with a likeness that can be understood by the intellect, because a likeness and the value of the likeness are not things that can be understood by the intellect. As for the first, then it is clear, because it is a likeness both in terms of the actual form and in terms of the meaning, and as for the second (a likeness in terms of value), then it is a likeness in terms of the meaning albeit not in terms of the form. But, the first is *kaamil* (complete) and the second is *qaasir* (deficient), and for this reason the author says, "It (the first) takes precedence." Meaning, the likeness which resembles (the original) both in form and meaning takes precedence over the one that resembles it only in meaning (i.e. the value of it). So, as long as a likeness which resembles it both in form and meaning can be found, a likeness that resembles it only in meaning will not be resorted to. In this there is a notification that *qadbaa* *bil-mithl* (*qadbaa* with a likeness) is of two types: *kaamil* (complete) and *qaasir* (deficient).

It is not to be said: This likes of this can be achieved when it comes to the *Huqooq* (Rights) of Allaah Ta`alaa also, because *qadbaa* of Salaaah in *jamaa`ah* is *kaamil* and performing *qadbaa* of it individually is *qaasir*, so why was that not considered?

That is because we (the Ahnaaf) say: According to them, *qadbaa* Salaaah performed individually is *kaamil*, and performed in *jamaa`ah* it is *akmal* (most...
complete), and they do not make qiyaas regarding the state of qadbaa based on the state of adaab.

The author says: "And compensation of a life and limbs with wealth."

This is an example of qadbaa with a likeness which cannot be understood by the intellect, because compensating for a life that was killed unintentionally with a complete diyah (blood money), or limbs that were chopped off unintentionally with a complete or partial diyah (blood money), this is not understood by the intellect, because there is no resemblance between a human being that owns (wealth) and spends (it) and between wealth that is owned and spent. However, it was legislated by Allaah Ta`ala so that the sacred lives of people are not killed for free (i.e. without consequence), because qisaas (retribution) is only legislated in the case of intention (killing or damage) so that equality can be achieved.

The author says: "And giving the value in the case of marrying (a woman to) a slave with other than him (i.e. other than that exact slave)."

This is an example of qadbaa that is in the meaning of adaab, and for this reason he referred to it with the term of adaab.

Meaning, if a man marries a woman off to a slave without specifying him, then, if he purchases an average slave and gives him to her, then it is not hidden that this will be regarded as adaab. If he gives to her the value of an average slave, this will be qadbaa but in the meaning of adaab, because the being of the slave is known (i.e. it is known that he is a slave) but the description (of him) is not known; thus, in order to prevent any disagreement between them, it is necessary that he gives to her an average slave, average in the sense that a slave of little value will be less than him and a slave of a lot of value will be above him, and he himself is in the middle (i.e. average), so when it comes to (what the) value (given should be), it goes to the middle (road, the average). Thus, (giving the) value (of the slave) will be in the meaning of adaab.
She (the woman) is forced to accept, just as how (she would be forced to accept) if he came to her with the named (i.e. promised slave).

This is a branching off with regards to the issue of it being in the meaning of adaa, i.e. the woman is forced to accept the value (of the slave) just as how, if he had come to her with the slave (that had been promised), she would be forced to accept the slave, so similarly she will be forced to accept the value (of the slave).

Thereafter, the author mentions two more branches off (from this issue) from Imaam Abu Haneefah, with regards to his saying: "And that is the preferred." He (the author) said:

"For this reason, Abu Haneefah said that with regards to (the case of) cutting off (a limb) and killing (both done intentionally), the wali (guardian of the victim) has the right to do both (to the perpetrator)."

Meaning, because of the fact that a likeness that is complete takes preference over a likeness that is incomplete, Imaam Abu Haneefah رحمه الله}
said, with regards to a scenario of one man cutting off the hand of another man and then killing him before he recovers: "It is appropriate for the wali (guardian) to do as the killer had done, so he will cut off (the hand of the killer) and then kill him, so that the recompense of (the action of the murderer) can be with a like action. The action was multiplied by the murderer (i.e. he had both chopped off a limb and killed) so it is appropriate that the wali do the same (unto him), out of consideration for the fact a complete likeness (similarly). However, if he (the guardian) suffices with just killing (the murderer), that is permissible for him to do as well, because in this, he would have pardoned some of what (the perpetrator had done, which in this case is the cutting off of a limb), so it becomes as though he had pardoned all of it."

وعندما لا يقتض الولي إلا بالقتل. لأن موجب القطع دخل في موجب القتل إذا أفضي إليه ولم يبرأ بينهما. وهذه المسألة على ثمانية أوجه، والمذكور في المتن واحد منها، وذلك لأنه لا يخلوا إما أن يكون القطع والقتل عمدين أو خطأين، أو الأول عمدا والأول خطأ، أو بالعكس فهي أربعة.

وعلى كل تقدير منها إما أن يتخلل بينهما براء أو لا، فإن كان الثاني بعد البراء فإما جنبانا إتفاقاً لا يتناقلان، سواء كانا عمدين أو خطأين، أو كانا أحدهما عمداً والآخر خطأ، وإن كان قبل البراء فإن كان أحدهما عمداً والآخر خطأ لى يتناقلان إتفاقاً، وإن كانا خطأين يتناقلان إتفاقاً، وإن كانا عمدين فهو المسألة الخلافية المذكورة في المتن يتداخلان عندهما لا عنهما، وهذا كله إذا صدرا عن شخص واحد. فإن صدرا عن شخصين فالكلا فيو طويل يعرف في موضعه.

ولا يضمن المثلي بالقيمة إذا انقطع المثل إلا يوم الخصومة.

>نتفريع ثان لأبي حنيفة رحمه الله على قوله: (وهو السابق)

يعني إذا غصب شخص من آخر مثلياً، ثم انقطع المثل وانصرم عن أيدي الناس فلا جرم تجب قيمته، فقال أبو حنيفة رحمه الله: لا يضمن هذا المثلي بالقيمة إلا قيمة يوم الخصومة، لأنه ما لم تقع الخصومة يعتبر أن يقرن على المثل الصوري وهو مقدم على المثل المعوي، فإذا وقعت الخصومة فحينئذ لا بد أن يأخذ المالك الضمان فيقدر الضمان بقيمة يوم الخصومة.
According to (Imaam Abu Yusuf and Imaam Muhammad), the \textit{wali} (guardian) may not seek retribution except through killing, because that (crime) which had necessitated the severing of a limb enters into (the crime) that had necessitated execution, if (the killer) had done both (and the victim) had not recovered between (the occurrence of the two crimes).

This \textit{mas'alah} has eight views, that which has been mentioned in the \textit{matn} (text of this book) being but one of them, and that is because either both the crimes of severing (a limb) and murder had been intentional or unintentional, or the first was intentional and the second was unintentional, or vice-versa, so there are four (possibilities).

Then, regardless of which (of these four) is the case, either there was a recovery between these two (crimes) or there was not. If the second (crime) had taken place after the victim had become healed then they are two separate crimes, by consensus, and they do not enter into one another these two crimes, i.e. they will not be treated as one), regardless of whether they had been intentional or unintentional, or one of them was intentional and the other was unintentional.

However, if (the second crime) took place prior to (the victim) healing, then, if one (of the crimes) was intentional and the other was unintentional, they will not enter into one another, according to consensus. However, if both were unintentional, they will enter into one another (be treated as one), by consensus. If both of them were intentional, then that is the \textit{mas'alah} disagreed upon mentioned in the \textit{matn} (text); according to (Imaam Abu Yusuf and Imaam Muhammad) they enter into one another (i.e. get treated as one), but according to (Imaam Abu Haneefah), they do not (get treated as one).

All of this (applies) if the (crimes) had come from just one individual; however, if (the guilty party) comprises of two individuals, then there is a lengthy discussion regarding the ruling and which will be known in its place. The author says: "And a likeness is not compensated for with (its) value, if the likeness is no longer available, except on the day of the dispute."

This is the second branching off (on that issue) on the view of Imaam Abu Haneefah رحمه الله عليه, regarding his saying: "It is preferred."

Meaning, if one person forcefully seizes something from another individual, and that thing which he had taken has a likeness, and then that likeness gets cut off and becomes unavailable to people, then undoubtedly (recompensing) with its value becomes obligatory.
Imaam Abu Haneefah رحمه الله عليه said: "This likeness (that was taken) will not be recompensed with its value except on the day of the dispute, because as long as the dispute (i.e. the day the case gets taken to the judge) has not taken place, there remains the possibility of acquiring its likeness in the interim, because a physical likeness is given preference over an immaterial or abstract likeness. When the dispute takes place, the owner must take the compensation, and the compensation will be calculated on the value (of the seized item) on the day of the dispute."

وعند أبي يوسف رحمه الله تعتبر قيمة يوم الغصب, لأنه لما انقطع المثل ينفق بما لا مثل له من ذوات القيم, وفيها تجب قيمة يوم الغصب بالإنفاق.

قلنا: الأصل ثمة كان رد الأصل. وإذا عجز عنه بالاستهلاك تجب عليه قيمة ذلك اليوم, وها هنا الأصل أيضاً رد العين وإذا عجز عنها يجب رد المثل فإذا عجز عن المثل وظهر عند القاضي تجب عليه قيمة ذلك اليوم.

وعند محمد رحمه الله تجب عليه قيمة يوم الإنقطاع, لأن العجز عن رد الأصل إنما يتحقق في هذا اليوم.

قلنا: نعم! ولكن يظهر ذلك العجز وقت الخصومة.

ثم إنه لما نشأت من هذا كله مقدمة وهي أن الضمان لا يجب إلا عند وجود المماثلة سواء كانت كاملة أو قاصرة, صورة أو معنى. فرّع عليها المصنف رحمه الله ثلاث مسائل على طبق مذهبه مختلفاً للشافعي رحمه الله, وإن لم تكن تلك المقدمة مذكورة في المتن فقال:

(وقلنا جميعاً: المنافع لا تضمن بالإتلاؤ)

وهو عطف على قوله: "قال أبو حنيفة"

أي ومن أجل أن ما لا يعقل له ممثل لا يضمن قلنا جميعاً - يعني أبا حنيفة وأبا يوسف ومحمداً رحمهم الله بخلاف الشافعي رحمه الله: لا يضمن منافع ما غصبه رجل بالإتلاؤ وكذا بالإمساك.
According to Imaam Abu Yusuf though, it is valued on what the value of the item was on the day it had originally been taken, because, after a likeness (of it) is no longer available, it transfers to that which has no likeness from the valuable goods, and it becomes obligatory (to recompense) with the value (the item had) on the day it was seized, according to consensus.

We say: The *asl* is to return the actual item itself (to the original owner). Where this is not possible on account of the item having been consumed (used up), it becomes obligatory to (recompense) with the value (it has) on that day. Here again, the *asl* is to return the actual (seized) item, but where he is incapable of that, it becomes obligatory to (recompense) with a likeness (of the seized item). If he is incapable of recompensing with a likeness (of the seized item), and the matter (is taken to) the Qaadhi (Judge), it becomes obligatory upon (the looter) to (recompense) with the value (the item has) on that day.

According to Imaam Muhammad, the value that is obligatory upon him to recompense is the value the item had on the day it became unavailable to people, because the incapability of returning the original item only came about on this day.

We say: "Yes! However, that inability only became manifest at the time of the dispute."

Then, an (important point) comes out from all this and that is, recompensating is only *waajib* (obligatory) when there is a likeness (to the seized item) whether it be a complete (likeness) or an incomplete (likeness), and whether it be in form (i.e. physical likeness) or abstract (a likeness in terms of monetary value). The author branches off three issues
from that according to his Madh-hab, contrary to Imaam ash-Shaafi`ee رحمة الله عليه, even though that (point) was not mentioned in the text (of the book).

He says:

"And all of us say: the benefits (of the item) are not recompensed in the event of ruin."

This is coupled to his statement: "Abu Haneefah said".

Meaning, in those things where there is no logically understood likeness, there is no compensation according to the Sharee`ah. All of us say, i.e. Imaam Abu Haneefah, Imaam Abu Yusuf and Imaam Muhammad رحمة الله عليهm, contrary to Imaam ash-Shaafi`ee رحمة الله عليه: "There is no compensation for the benefits derived by a man from the item which he had looted in the event of it being destroyed (or spoiled), and similarly (is the case) with withholding."

An example of such a scenario is: a man forcefully takes a horse from someone, and he rides it for a number of journeys, or he keeps it at his house and does not ride on it and nor does he send it (away). All of our `Ulamaa say: "There is no recompense for these benefits (he had derived from the horse)."

As for the benefits, then it is clear, because if there were to be compensation for benefits (derived), then (it would have to be) by the owner riding (the horse) of the looter for the same period of time as the looter had ridden on the horse of the owner, or that the owner keeps the horse of the looter (indoors, i.e. without using it) for the same period of time as the looter had done so with the horse of the owner, and that is invalid because of the equality of one ride and another and one journey and another and one keeping (the horse back) and another. As for when it comes to specific (people) and wealth, then the benefits are transient, it does not remain two times (i.e. can only be used once), and it cannot be evaluated, unlike money.
We say that there is compensation with wealth in the case of *ijaara* (leasing), because permission and pleasure (of the owner) has an effect in obligating the roots (the items themselves) and the extras (those things connected to the main items) both, and transgression has no effect in it.

Imaam ash-Shaafi`ee says there is compensation for wealth (calculated) according to `urf (custom) in leasing it to that place, as *qiyaas* (analogical deduction) upon *ijaara* (leasing), but (the correct view) is what we have stated. It is necessary for you, then, to differentiate between the *manaafi`* (benefits) and the *zawaa'id* (extras). The *manaafi`* are things such as riding the animal, carrying (goods) on it, etc. The *zawaa'id* are things such as offspring of the animal, and its milk, and the fruits of a tree, etc.

The looted (forcefully seized) item itself is compensated for in the case of *halaak* (being destroyed) or *istiblaak* (being consumed or used up). The *zawaa'id* are compensated for in the case of *istiblaak*, not *halaak*. The *manaafi`* are not compensated for, neither in *istiblaak* nor in *halaak*. 
The author refers to istiblaak as itlaaf (spoiling; ruining) and he did not mention balaak, which in this case is the restraining of the horse (i.e. keeping it tied up, not riding it and not using it), and there is no compensation for it, using qiyaas on zawaa'id, because the zawaa'id, since they do not get compensated for in the case of balaak (destruction, or death, or expiring by itself, etc.) then it is more rightful that there is no compensation for the manaafi' (benefits derived), and this difference (between the two) is a matter in which most people are confused.

The author says: "There is no compensation for qisaas (retribution) by the killing of the killer."

This is a second branching off for us with regards to (our view) that those which have no likeness, there is no compensation for it, originally, i.e. in the case of a person whom, it is obligatory upon him to carry out qisaas for another, but a stranger who is not from the heirs of the victim then kills the killer, then there is no compensation for this stranger for the sake of the heirs of the murdered victim (i.e. the one killed by the original killer), neither diiyah (blood-money) nor qisaas (retribution), according to us (Ahnaaf), although there is compensation for the sake of the heirs of the murderer, absolutely.
That is because *qisaas* (retribution) is an abstract matter which cannot be evaluated in and of itself and no logical likeness can be found for it, thus (a person cannot) say: "The stranger wasted the *qisaas* (of the person who had been placed in charge of carrying it out), and thus the *diyyah* (blood-money) is obligatory upon him." as Imaam ash-Shaafi`ee had said. Rather, it is only evaluated in terms of the *diyyah* in that wherein there is no likeness so that there is no wasting of life altogether, necessarily. In this scenario, the stranger did not waste anything of the heirs (family members, relatives, etc.) of the victim; rather, he killed their enemy, so it is as though he helped them.

Yes! He is responsible for compensation on account of the heirs of the murderer, either with *qisaas* or with *diyyah*, according to what gets decided.

The author says: "There is no compensation for the possession of *nikaah* through testifying to *talaaq* after consummation of the marriage."

This is a third branching off with regards to our view that when a thing has no likeness, there is no compensation. Meaning, if two men testify that so-and-so divorced his wife after consummation of the marriage, and so the Qaadhi (Judge) rules that he gives her the *mabr* and separates from her, and thereafter the two witnesses retract their testification, then, according to us, they do not compensate anything to the husband, because the *mabr* had been obligatory upon him (to give to her) in any case, whether he were to divorce her or not, and so they have not destroyed anything of his other than (preventing him) from deriving enjoyment from the woman (for a period of time), and that is what has been referred to (by the author) as the "possession of *nikaah*", and it has no likeness. There cannot be a likeness of intercourse with one woman with intercourse with another (i.e. there cannot be, as a compensation, that this man now sleeps with the wives of the two witnesses), because that is Haraam in the Sharee`ah. Wealth can also not be brought as a likeness, because evaluating it with money does not appear except in (getting married), necessarily, to show the honour (of marriage), and it does not appear when parting (i.e. divorcing), as a rule, and for this reason it is valid to depart from the woman with *talaaq* (divorce) without any substitute, or witnesses, or *wali*, or permission.
It (money) only becomes evaluated in the case of *khula* because there is *nass* (regarding this), not *qiyaas*.

He restricted it to *talaaq* after consummation because if those two witnesses testify that (he had issued) *talaaq* prior to consummation, and thereafter they retract their testification, then they will be liable to compensate the husband for half of the *mahr*, because prior to consummation, it is not *waa`ij* on the husband to give her *mahr* except in the case of *talaaq*, because there is the possibility that she might become a Murtadd, or that she might consent to (i.e. have relations with) the son of this husband (that she married), in which case the *mahr* will fall away, as a rule.

He emphasised half the *mahr*, in the case of *talaaq*, because it is as though the two witnesses had taken half of the *mahr* out of the hand of the husband and given it to (the wife).

After the author completed his explanation of the types of *adaa* and *qadbaa*, he now begins explaining the issue of goodness in the thing that is commanded, so he says:

(ولابد للمأمور به من صفه الحسن ضرورة أن الأمر حكيم)

يعني لابد أن يكون المأمور به حسناً عند الله تعالى قبل الأمر. ولكن يعرف ذلك بالأمر ضرورة أن الأمر حكيم، والحكيم لا يأمر بالفحشاء وهذا عندنا. abandonment of the husband by the wife. And the ash'arist judges in this matter, he also abandon the wife, the reason for this is that:

ثم شرع في تقسيم الحسن إلى عيبه وإلي غيره. وتتقسيم كل منهما إلى أقسامها فقال:

(وهو إما أن يكون لعينه)
"The thing which is commanded will always possess the quality of goodness because He Who gives the command (i.e. Allaah Ta`aalaa) is All-Wise."

Meaning, the command given will always by good according to Allaah Ta`aalaa prior to (Him giving) the command, but that is known with the command, necessarily, because the Issuer of the Commands is All-Wise, and someone who is wise does not order with shamelessness, and this is according to us. According to the Mu`tazilah, the thing that decides whether something is good or bad is the intellect, and the Sharee`ah plays no part in that. According to Imaam al-Ash`ari, the thing that decides whether something is good or bad is the Sharee`ah, and the intellect plays no part in that.

Thereafter, the author begins dividing "hasan" (good) into what is hasan li-`aynibi (good in and of itself) and what hasan li-ghayribi (good because of something else), and he then goes on to further divide each of those into their categories, so he says:

"It (goodness) is either (good) in and of itself."

Meaning, hasan (good) is either because the very thing itself that is commanded is good, because its goodness lies in what is what placed for without any intermediary. This is of three types, according to what has been mentioned.

Either it (hasan) is such that it does not accept falling away, or it is such that it accepts falling away.

"Either it (hasan) is such that it does not accept falling away, or it is such that it accepts falling away."
Meaning, either the *hasan* (goodness) is such that it never falls away from the thing which was commanded, but rather, it is always good, commanded upon the *mukallaf* (one who is bound to obey the laws of the Sharee`ah), obligatory upon him. Or, the *hasan* is such that it falls away something, because of some excuse or the other.

The author says:

"Or, it is connected to this type (of *hasan*), but it resembles that which is *hasan* because of some meaning in other than it."

Meaning, the thing which is commanded (is such that) it is connected to (the category) of *hasan li-'aynihi* (that which is good in and of itself), but it resembles *hasan li-ghayribi* (good because of something else), so it has two facets.
there is come laxity in this division, and what is necessary is that he should say: It is either *hasan li-`aynihi* (good in and of itself) by itself or with a medium. And the first either accepts falling away or it does not accept it. A lot of laxity has come from him with regards to this division.

The author says:

"Like *tasdeeq* (believing in Allaah Ta`aalaa), Salaah and Zakaah."

This is *nasbr* in the order of *laff*. The first is an example of that which does not accept falling away, because *tasdeeq* is forever binding upon the person - it never falls away from him so long as he is an adult and sane. For this reason, it does not fall away in the case of *ikraah* (coercion). If he is forced to utter a word of Kufr, it is permissible for him to utter it with the tongue on condition that the *tasdeeq* remains (in his heart), because *iqraar* (verbal testification of Islaam) accepts falling away (i.e. such as in a case like this), but *tasdeeq* never ever accepts falling away. *Tasdeeq* being *hasan* (good) is established in and of itself, because the intellect can understand logically the obligation of gratitude towards The Bestower, The Creator.

The second is an example of that which accepts falling away, because Salaah falls away in the case of *haidh*, and *nifaas*, just as *iqraar* (verbal testification) falls away in the case of *ikraah* (coercion). Salaah being *hasan* (good) in and of itself is because from beginning to end, it is about glorifying Allaah Ta`aalaa with statements and with actions, and praising Him, and having *khushoo* (humility) for Him, and standing in front of Him, and sitting in His Presence, even though the method of Salaah, the number of *raka`aat*, the times and the conditions are not known through the intellect alone but only through the Sharee`ah. I have expained its secrets in *al-Mathnawi al-Ma`nawi*.

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3 This is part of *`Ilm al-Balaaghah* (Rhetoric of the Arabic Language). In brief, it refers to a type of joining and expansion. For example, take this sentence: “The government plans on building more schools and more hospitals, with more books and more beds.” He could have said: “The government is going to build more schools with more books and more hospitals with more beds.” But the way of saying it in the *laff* and *nashr* style is like the example given here. The normal method of speaking is to mention an entity and then expand on it, and then the next entity and expand on it (such as by describing it, etc.) In the *laff* and *nashr* way, you will mention it like: entity 1, entity 2, followed up by expansion 1, expansion 2. So, you will have a sentence having two parts: in the first part of the sentence, known as the *laff* part (you can translate *laff* as joining, or tying up), you will mention entity 1 and entity 2. In the second part of the sentence, which is the *nashr* (expansion) part, you will mention expansion 1 and expansion 2 which explains entity 1 and entity 2. And Allaah Ta`aalaa knows best.
The third is an example of that which is connected to *hasan li-`aynibi* but which resembles *hasan li-ghayrībi*, because Zakaah, on its outward appearance, is the wastage of wealth; however, it becomes good because of its fulfilling the needs of the poor who is beloved to Allaah Ta`ālā, and his being in need is not by his own choice but because of how Allaah Ta`ālā has created (i.e. decreed it to be) like that.

Similarly, fasting in and of itself is starving and ruining the *nafs*; however, it becomes good because of its (leading to) overpowering the *Nafs-e-Ammaarah* (the *nafs* which always calls towards evil) which is an enemy of Allaah Ta`aalah, and this enmity is because Allaah Ta`aalah has created (i.e. decreed it) as such, and the *nafs* has no choice regarding it.

Similarly, Hajj in and of itself is about rushing, traveling, seeing a number of different places, but it becomes good because of the honour of the place (i.e. Makkah) which Allaah Ta`aalah has honoured over all other places, and that honour is not by the choice of the places, but rather, because Allaah Ta`aalah created (decreed it to be) like that, so it becomes as though these mediums are not a barrier between (them), and thus they become *hasan li-`aynibi* (good in and of themselves).

أو لغيره، (أ) [عطف على قوله (لعنه) أي الحسن إما أن يكون لغير المأمور به بأن يكون منشأ حسنه هو ذلك الغير والمأمور به لا دخل له فيه. وهو ثلاثة أنواع أيضاً على ما بنيه بقوله: 109]
وهو إما أن لا يتأدى بنفس المأمور به. أو ينادي به. أو يكون حسناً لحسن في شرطه بعد ما (كان حسناً لمعنى في نفسه. أو ملحقاً به)

في هذا التقسيم وسماحاته. لأن ضمير (هو) راجع إلى الغير. وضمير (يكون) راجع إلى المأمور به. وفيه انتشار. والمعنى أن ذلك الغير الذي حسن المأمور به لأجله إما أن لا يتأدى بنفس فعل المأمور به. بل لابد أن يوجد المأمور به بفعل آخر فهو كامل في كونه حسناً لغيره. أو يتأدى بنفس فعل المأمور به لا يحتاج إلى فعل آخر فهو قريب من الحسن لعينه. أو يكون ذلك المأمور به حسناً لحسن في شرط وهو القدرة. يعني لا يكلف الله تعالى لأحد بأمر من المأمور إلا بحسب طاقته وقدرته. فهذا أيضاً حسن.

The author says: "Or (basan) li-ghayrihi."

This is coupled to his statement, "(Hasan) li-`aynihi." Meaning, basan (goodness) is either because of other than the commanded thing, such as the goodness coming out from that other thing and the actual commanded thing not entering into it, and that is of three types also, as he explained by saying:

"It is either, it is not discharged (i.e. falls away from the responsibility of the mukallaf) through the commanded thing, or it is discharged through it, or it is basan (good) because of a goodness in its condition, after it had been basan (good) because of a meaning in and of itself or that it is connected to."

In this division and its examples there is laxity, because the pronoun "it" refers to "other", and the pronoun in "it becomes" refers to the commanded thing, and in that is an expansion. The meaning is that this "other" which the command becomes basan (good) on account of, either it is not discharged by the commanded thing itself, but rather it is necessary that the commanded thing be found (with another action, so it is complete in its being basan (good) for (because of) other than itself. Or, (it is such that) it is discharged by the very action commanded itself, having no need for another action, for then it is very near to (being) basan li-`aynihi (good in and of itself). Or, that commanded thing is basan (good) because of a goodness in its condition, which is qudrab (capability; power), i.e. Allaah Ta`ala does not impose a command on anyone except according to what he can bear and what he is capable of, so this also is basan (good).
وهذا القسم ليس بقسم في الواقع ولكنه شرط للأقسام الخمسة المتقدمة. لعينه ولغيره، ولهذا لم يذكره الجمهور بعنوان القسم. وإنما ذكره فكر الإسلام مساحة وسماها ضرباً سادساً جامعاً لكل من الخمسة المقدمة. فإذا كان جامعاً فينفي أن يقول بعد ما كان حسنًا لمعنى في نفسه أو ملحقاً به أو لغيره حتى يكون المعنى أن الأمر به بعد ما كان حسنًا لمعنى في نفسه كالمتصدق والصلاة، أو ملحقاً به كالركاية والصوم والحج، أو لغيره كالوضوء والجهاد صار حسنًا لمعنى آخر وهو كونه مشروطاً بالقدرة فهذه القدرة صارت أواخر الشرع كلها حسنة للغير.

This category is not a category in reality, but rather, it is a condition for the other five categories mentioned previously, \( l\)-\( `aynihi \) and \( l\)-\( ghayrihi \). For this reason, the majority have not mentioned it under the heading of division (i.e. have not regarded it as a separate category). Fakhr-ul-Islam mentioned it out of lenience and named it as a sixth, inclusive form for all of the previous five types. Then, if it is inclusive, then it is necessary that he says, after it is \( hasan \) (good) because of a meaning in itself or connected to it or because of other than it, until the meaning is that the thing which is commanded, after it is \( hasan \) (good) because of a meaning in itself, like \( tasdeeq \), and Salaah, or connected to it like Zakaah and, and fasting and Hajj, or other than it like Wudhoo and Jihaaad, it becomes \( hasan \) (good) because of another meaning, and that is its being conditioned by qudrah (capability).

Because of this \( qudrab \), the Commands of the Share`ah are all \( hasan \) (good) because of something else.
والجهاد مثال للمأمور به الذي يتأدى الغير بأدائه فإنه في نفسه تعذيب عباد الله وتخريب بلاد الله، وإنما حسن لأجل إعلاء كلمة الله، والإعلاء يحصل بمجرد فعل الجهاد لا فعل آخر بعده.

وذلك إقامة الحدود في نفسها تعذيب وإنما حسن لزجر الناس من المعاصي والزجر يحصل بمجرد إقامة الحدود لا فعل آخر بعده.

But, that which is *hasan* (good) because of a meaning in itself, and that which is *hasan* because of what it is connected to, it becomes inclusive because of its state of being (for) *li-`aynibi* and *li-ghayribi*, and for this reason, he restricted it to the two of them, contrary to if it is (*hasan*) *li-ghayribi*, for it *hasan* *li-ghayribi* is included in it from its facet, because of the specified other and because of the *qudrah* (capability), so it does not exit from its state of being *li-ghayribi*, and perhaps for this reason he did not restrict it with it.

Thereafter, after these three laxities, he was also lax in the examples, so he said:

"Like Wudhoo, and Jihaad, and *qudrah* (strength; ability; capability) which enables the bondsman (of Allaah) to discharge that which is binding upon him."

Wudhoo is an example of a commanded thing which, something else is not discharged by discharging it itself, because in and of itself, it is simply cooling and cleaning the limbs, and wasting water, but it becomes *hasan* (good) for the sake of discharging Salaah. Salaah is not discharged simply by the performance of Wudhoo alone; rather, it (Wudhoo) requires another action intentionally, through which Salaah is found. If he made a *niyyah* (intention) in this Wudhoo, then it will be that he has intended proximity (to Allaah Ta’aala) and he will be rewarded for it.

Jihaad it an example of a commanded thing which, something else is discharged by discharging it (Jihaad), because in and of itself, it is punishing the bondsmen of Allaah and destroying the lands of Allaah, but it becomes *hasan* (good) because of raising the Kalimah of Allaah, and this *I`laa* (raising) is acquired by simply performing Jihaad and without needing a separate action.

Similarly, the carrying out of the *Hudood* (punishments prescribed by the Sharee’ah) is, in itself, a punishing, but it becomes *hasan* (good) because of its restraining the people from disobedience, and this restraining is acquired simply by carrying out the *Hudood*, without needing another action.
Similarly, Janaazah Salaah in and of itself is an innovation which resembles the worship of idols, but it is hasan (good) because of it fulfilling the right of a Muslim, and that is acquired simply by the performance of Salaat-ul-Janaazah without the (performance) of another action.

Therefore, these intermediaries, which is the Kufr of the Kaafir, the the Islaam of the deceased, and the tearing up of the sanctity of the prevented things, all of it is by the action of the bondsmen and their choice, and thus these intermediaries have been considered here to be part of hasan li-ghayrihi, contrary to the intermediaries of Zakaah, and fasting, and Hajj, i.e. the poverty of the poor person, the transgressing against the self, and the nobility of the place, because those are purely by the Creating of Allaah Ta`aala (i.e. His Decree), and there bondsmen have no choice in those matters, and for this reason, those were made part of (the category of) those things that are connected to hasan li-`aynihi, so ponder about this.

والقدرة مثل للشرط الذي حسن المأمور به لأجله لا للمأمور به، وإن قدرت المضاف وقتلت: ومشروط القدرة. كان مثالا للمأمور به المشروط بها، وإن جعلت ضمير: أو يكون حسنًا. راجعاً إلى الغير كما كان ضمير: لا ينادى، أو: ينادى. راجعاً إليه كما قبل لم ينشر الكلام وتصون القدرة مثلًا للغير لا تكلف لكن يكون الشرط حينئذ بمعنى المشروط ويكون المعنى: أو يكون الغير كالقدرة حسنة في مشروطها، فإنقلب المقصود وانعكس المدعو وبالجملة لا يخلو هذا المقام عن تمحول

 ثم وصف القدرة بقوله: يتمكن بها العبد من أداء ما لزمه. للإبقاء إلى أن هذه القدرة ليست قدرة حقيقية يكون معها الفعل وتصون علة له بلا تخلف فإن ذلك ليس مدار التكلف، لأنه لا يكون سابقاً على الفعل حتى يكلف بسبيله الفاعل، بل المراد بها هاهنا هي القدرة التي بمعنى سلامة
Qudrab is an example of a condition which, the commanded thing is good because of it, not because of the commanded thing itself. Meaning, "The thing stipulated by qudrah." It is an example of the commanded thing which is conditioned by it. You could say that the pronoun in, "Or it is hasan," refers to something other than it, just as the pronoun in "It is not discharged," and "It is discharged," refers to it as has been mentioned, then the discussion is not expanded and qudrah then is an example of "the other" without imposition; however, the condition (shart) then will mean "that which has been made stipulated", and the meaning will become: "Or something else, like qudrah, becomes hasan (good) because of a goodness in its stipulation," and in this case the intended meaning will be reversed as well as the claim, and all in all, this place is not free from seeking.

Thereafter, he described qudrah by his saying: "The bondsman is able - through it - to discharge what is binding upon him, indicating thereby that this qudrah is not a literal qudrah which the action is with and which becomes an `illah (cause) for it without any lagging, because that is not the subject of takleef (imposition upon the person), because it cannot precede the action so much so that on account of it the person becomes mukallaf; rather, the intended meaning of takleef (the duties of Sharee`ah being binding upon a person who is baaligh, sane) here is that qudrah which has the meaning of the causes and instruments being safe and healthy, and the healthiness of the limbs, because that precedes the action, and the validity of takleef depends upon this capability.

The qudrah (capability) of performing Wudhoo is the finding of water; otherwise, there is Tayammum. The qudrah (capability) of facing the Qiblah is the absence of fear (of an enemy) and knowing (what direction it is); otherwise, whatever direction one is capable of facing, or arriving at a conclusion after thinking. The qudrah (capability) of standing (in Salaah) is health; otherwise, there is sitting or gesturing. The qudrah (capability) of Zakaah is to own the nisaab; otherwise, it is pardoned. The qudrah
(capability) of fasting is health and residence (in a town, not being on a journey); otherwise, there is performing qadbaa afterwards. The qudrab (capability) of Hajj is the finding of sufficient provisions (money, etc.) and a conveyance, and the healthiness of the limbs, and the safety of the road; otherwise, it (Hajj) becomes voluntary (not obligatory), and so on and so forth.

ثم قسم هذه القدرة إلى المطلق والكامل فقال:

(وهي نوعان: مطلق)

أي القدرة التي يتمكن بها العبد وهي بمعنى سلامة الآلات والأسباب نوعان:

أحدهما: مطلق

أي غير مقيد بصفة البسر والسهولة كما في القسم الآتي

(ويو أدنى ما يتمكن بو المأمور من أداء ما لزمه, وهو شرط في أداء كل أمر)

أي المطلق: أدنى ما يتمكن به العبد وهذا القدر من التمكن شرط في أداء كل أمر, والباقي زائد, وهو قدر ما يسع فيه أربع ركعات من الظهر, فإن اكتفى بهذا القدر سمي ممكنة وهو الذي سماه المصصف مطلقاً وكان ينبغي أن يقول: مطلق ومقيد, أو كاملاً وقاصراً.

وبازيد لفظ (أدنى) إفرق بين المقسم والقسم, لأن المقسم هو ما يتمكن بها العبد, والقسم هو أدنى ما يتمكن بها العبد. فلا يرد ما يتوهم أنه يلزم إقسام الشيء إلى نفسه وإلي غيره, وإنما قيده بأداء كل أمر, لأن القضاء لا يشترط فيه هذه القدرة مطلقاً, بل إذا كان المطلوب الفعل.

وأما إذا كان المطلوب السؤال والإثم فلا يشترط فيه ذلك. فإن من عليه ألف صلاة يقل له في النفس الأخيرة من العمر إن هذه الصلاة واجبة عليكم, ونثرته تظهر في حق وجوب الإضاءة بالفدية والإثم.

(والشرط توهمه, لا حقيقته)
Thereafter, the author divided *qudrab* into *mutlaq* and *kaamil*, so he said:

"And it is two types: *mutlaq*."

Meaning, that *qudrab* which gives the person the ability (to carry out the duty), and which has the meaning of "safety and health of the limbs and instruments and causes", is of two types: one of them is "*mutlaq*" (unrestricted). Meaning, it is not restricted with the quality of easiness like in the coming category (other type).

The author says:

"(It refers to) the absolute lowest level by which the person who is commanded will be able to carry out that which is binding upon him, and this (i.e. having at least this amount of capability) is a condition for every command (i.e. no command becomes binding in the absence of at least this much capability)."

Meaning, *mutlaq* refers to the lowest amount (of capability) by which the person will be able (to carry out the duty), and this level of capability is a condition for the discharge of every command, and it is that amount in which a person will be able to perform four *raka`aat* of *Zhuhr* (for example). If he suffices with this amount, then this is termed "*mumakkanah*", and it is the same thing which the author has termed "*mutlaq*", though it would have been more appropriate for him to say *mutlaq* and *muqayyad*, or *kaamil* and *qaasir*.

By adding the word "lowest", he divided between *muqassam* and *qasm*, because *muqassam* is that by which the person has the capability (to perform the duty), and *qasm* is the lowest amount the person will need in order to perform (the duty), so there does not occur that which he (i.e. Imaam ibn al-Malik) assumed, that a thing needs to be divided into itself and into other than it. Rather, he (the author) restricted it with the discharge of every command, because this *qudrab* is not a stipulation in *qadhaa*, rather, (it only is a condition) if what is sought is an action. As for if what is sought is questioning or a sin (i.e. if what is sought from the person is to carry out what was requested from him by his deceased relative, for example, of carrying out a *wasiyyat*, and that he will be sinful if he does not carry out the *wasiyyat*) then it (this *qudrab*) is not stipulated, because the person who has 1,000 Salaats due upon him, it is said to him in the final breath of his life,
"This Salaah is obligatory upon you." The fruit (of this difference) is shown (i.e. understood) with regards to the right of the obligation of making a wasiyyat (that the heir pays fidyah, such as for missed Salaats, etc.) and sin (if he does not do so).

The author says:

"The shart is its being assumed, not its reality."

Meaning, the shart (condition) between this lowest amount of capability is that its existence is assumed, and its existence is not firm and established.

What this means is that, it is not necessary that the time in which one will be able to perform four raka`aat must be present right now; it is sufficient for it to be assumed (i.e. that there will be this time). For example, this assumption could be fulfilled externally by Allaah Ta`alaa stretching it so
that he (has sufficient time) to perform these four naka‘aat therein. Otherwise, its fruit appears in *gudbaa*.

The author says:

"So much so that if a minor becomes *baaligh*, or a Kaafir becomes a Muslim, or a woman becomes pure from *haidh*, and this happens at the *aakhir-ul-waqt* (end of the appointed time, the last few moments), the Salaah becomes obligatory upon the person because of the assumed possibility of the time being stretched out such as by the pausing of the sun."

What he means by *aakhir-ul-waqt* is that amount of time in which a person will not be able to do anything except make the *takbeer-e-tabreemah* (opening *takbeer*). So, if these things become *waajib* in this time, then the Salaah becomes binding because of the possibility of the time being stretched by the halting of the sun. So, if this really does happen (i.e. the sun stands still), then he will perform the Salaah therein; otherwise, he will make *gudbaa*.

This pausing of the sun is something which is possible to happen as a miracle, such as what happened for Nabi Sulaymaan عليه الصلاة والسلام when (the horses) were displayed before him in the afternoon, well-trained horses of the highest breed (for Jihaad), and the sun almost set, so he struck the legs and necks of the horses, so Allaah returned the sun until Sulaymaan عليه السلام had performed `Asr Salaah, and he was given power over the wind in return for the horses, and this is according to the *nass* of the Qur'aan.

The same (i.e. pausing of the sun) had happened for Nabi Yoosha` عليه السلام, at the time of conquering al-Quds (Palestine), so that he was able to conquer it before Saturday night had entered. The same also happened for our Nabi صلى الله عليه وسلم when Hadhrat `Ali رضي الله عنه missed Salaat-ul-`Asr, as was mentioned in the books of Seerah.
عطف على قول: مطلق، وهذا هو القسم الثاني، وسمى هذا ميسرة لأنه جعل الأداء يسيراً سهلاً على المكلف، لا بمعنى أنه قد كان قبل ذلك غصياً ثم يسره الله بعد ذلك بل بمعنى أنه أوجب من الإبتداء بطرق السير والسهولة. كما يقال: ضيق فم الرَّكِّيَّة، أي إجعله ضيقاً من الإبتداء، لا أنه كان واسعاً ثم يضيقه.

و وهذه القدرة شرط في أكثر العبادات المالية دون البدنية

(ودوام هذه القدرة شرط لدوام الواجب)

أي ما دامت هذه القدرة باقية يبقى الواجب، وإذا انفي القدرة إنفي الواجب.

This is different to Hajj, because in Hajj, there is no assumption with regards to the provision and the conveyance, because most people perform Hajj without provision and conveyance, because considering that (i.e. provision and conveyance, when it comes to the obligation of Hajj) would cause a great difficulty, and if that were to be considered, its fruit (i.e. benefit) would not be apparent in the obligation of qadhā, because there is no qadbā for Hajj, but it only appears with regards to sin and leaving a wasiyyat, and that is not understood by the intellect.

The author says:

"And kaamil, and that is the capability which makes discharging (the duty) easy."

This is coupled to his statement, "Mutlaq," and this is the second type, and it is termed muyassirab because it makes the discharging of the duty easy upon the mukallaf. It does not mean that previously it had been difficult and then Allaah Ta’ālaa made it easy thereafter. Rather, it means that from the very beginning of when it was made obligatory, it was made obligatory in a way that is easy and simple. Like it is said: "Make tight the mouth of the well." i.e. make it tight/constricted from the very beginning (when you are digging the well). It does not mean that it was wide and thereafter he (the person) makes it tight.

This qudrab (capability) is a shart (condition) in most monetary `Ibaadaat, not the bodily `Ibaadaat.

The author says:
"The obligation remains so long as the *qudrab* (capability to perform it) remains."

Meaning, as long as this capability remains, the obligation remains, and when the *qudrab* is no longer there, the obligation leaves as well.

لأن الواجب كان ثاباً باليسر فإن بقي بدون القدرة يتبديل اليسر إلى العسر الصرف

(حتى تبطل الزكاة والعشر والخراج بهلاك المال)

Because the obligation is affirmed with easiness, so if it remains without *qudrab*, then this easiness would change into difficulty.

The author says:

"So much so that Zakaah, `Ushr and Kharaaj fall away in the event of the destruction of the wealth."

This is a branching off from his statement: "The continuation of this *qudrab*." Meaning, Zakaah is *waajib* with the *qudrab* of *muyassirah*, because the capability in it is affirmed by possessing the the *asl* (root) of the wealth (i.e. the *nisab* amount, free from any debts or needs he might have); thus, when having the *nisab* for an entire lunar year was stipulated, it become known that in it is this *qudrab al-muyassirah*. So, if the *nisab* is destroyed after a complete lunar year, the Zakaah falls away, because if it were to remain it would just be a debt upon him.

UNDG SHAFI’I LA'T SIFATU L-TAFJEREL WJU QABULU BAN ABALHAMIN, BAHALLAH MA IZA ASHTAREKH, IDH TIBDIQ U WHAL ADRA.IA. JAGRA A LAYLA T affid. 

وهذا إذا هكلا كل النصاب, إذ لو هكلا بعض النصاب تيقي بقسطه. لأن شرط النصاب في الإبتداء لم يكن إلا للغائع لا لليسر إذ أداء درهم من أربعين كأداء خمسة درهم من مأتين. فإذا وجد الفناء ثم هكلا البعض فاليسر في الباقي بقادر بقدر حصيده
According to Imaam ash-Shaafi`ee, the obligation does not fall away because the obligation had become established upon him when he became capable (of paying it), and this is contrary to the case of him intentionally consuming (the nisaab), because if he does so, then the obligation (of paying it) remains upon him (according to the Ahnaaf as well) as a punishment upon him for transgressing (i.e. against the rights of those who were meant to receive it).

This is if the entire nisaab gets destroyed. As for if a part of the nisaab gets destroyed, then it remains with its portion, because the condition of nisaab, in the beginning, was for the rich, not for easiness, because the giving of one dirham from out of 40 dirhams is like giving 5 dirhams out of 200, so when richness is found and thereafter some gets destroyed, then the easiness in the remaining (part) remains proportionate to its portion.

Similarly, `Ushr becomes waajib when there is al-qudrab al-muyassirah (that amount which makes discharging the duty easy), because capability comes about by farming, cultivating the land. So, the fact there is a stipulation for nine-tenths to remain with him is a proof that it was made waajib in a way that is easy; thus, if the (´Ushr) is destroyed, all of it or part of it, after having had the capability of spending (discharging) it, then that tenth falls away, because it is connected to the other parts (and it is not obligatory) unless the other parts are there as well.

Similarly, Kharaaj (becomes obligatory) when there is that amount which makes (discharging it) easy (al-qudrab al-muyassirah), because there is the stipulation of the capability of farming due to the falling of rain and having the implements for farming, etc. So, if he just leaves the land alone without farming, Kharaaj still becomes waajib upon him because of the fact that he
The author says:

"This is contrary to the first (i.e. al-qudrab al-mumakkinab, or the amount which there is capability for), because Hajj and Sadaqat-ul-Fitr do not fall away on account of the destruction of wealth."

This is an explanation of capability by way of comparison, i.e. when it comes to these things, then it is not a condition that the capability remains in order for the obligation to remain, because it is purely a condition, thus its remaining is not necessary, like witnesses in the issue of nikaah (i.e. witnesses
are necessary in order to conclude a nikaab, but the remaining of those
witnesses is not a condition for the marriage to remain, so much so that if
the witnesses were to die, the nikaab of course remains intact). So, if al-
gudrab al-mumakkinah (the ability that makes one capable of discharging the
obligation) leaves, the obligation remains. For this reason, Hajj and Sadaqat-
ul-Fitr remain waajib upon a person even if the wealth is destroyed, because
Hajj was affirmed (obligated) when there was al-gudrab al-mumakkinah,
because a little bit of provision and one conveyance is the least amount
necessary by which a person becomes capable of discharging the Hajj. As
for easiness (i.e. discharging it in a way that is easy), then that would only
come about if he had lots of servants, lots of conveyances and rides,
different helpers, lots of wealth, etc. So, when the qudrah (capability) is
gone, the Hajj remains upon its state (of being obligatory), and this becomes
apparent in the issue of sin and bequest.

Similarly, Sadaqat-ul-Fitr (becomes obligatory upon the person) when he has
al-gudrab al-mumakkinah (that capability or that amount which makes him
capable of discharging it). Do you not see that in Sadaqat-ul-Fitr, there is no
stipulation of the passing of a lunar year and an increasing (of the wealth)?
Rather, if he possesses the nisaab on the Day of `Eid, Sadaqat-ul-Fitr
becomes obligatory upon him, and if that nisaab then leaves, the obligation
remains upon him.

According to Imaam ash-Shaafi`ee, every person who possesses even this
much food that, if he eats today there will be some food left over (i.e. and
that is everything that he has), Sadaqat-ul-Fitr is waajib (obligatory) upon
(even) him, and there is no stipulation of possessing the nisaab.

We (the Ahnaaf) say: "This would lead to the situations being reversed,
because he would give the Sadaqat-ul-Fitr today and then he would need to
ask that person tomorrow for that very same sadaqah (because he himself is
poor and in need of it)."

ثم لما فرغ المصنف عن بياف حسن المأمور بو شرع في بياف جوازه مناسبة وأطراداً فقاؿ:

(وهل تثبت صفة الجواز للمأمور بو إذا أتى بو؟ قاؿ بعض المتكلمين: لا)

يعني إختلفوا في أنه إذا أدى المأمور بو مع رعاية الشرائط والأركان فهل بجوز لنا أن نحكم
بمجرد إتيانه بالجواز؟ أو نتوقف عليه حتى يظهر دليل خارجي يدل على طهارة الماء وسائر
الشروط.
After the author finished explaining the goodness of the commanded thing, he now commences his explanation of its *jawaaz* (i.e. being passed and falling away from the responsibility of the *mukallaaf*), in conformity (to the subject matter) and in succession, so he said:

"Is the quality of *jawaaz* affirmed for the commanded thing if he (the person) comes with it (i.e. carries it out)? Some of the Mutakallimeen (logicians) said: No."

Meaning, they differed among themselves regarding whether, if he discharges the commanded thing along with taking into consideration its stipulations, its pillars, etc. then, can we judge it with *jawaaz* (i.e. that it is passed and no longer binding upon him) by his simply having executed it, or are we to exercise reservation on the issue until some external evidence becomes apparent to us which points out to the purity of the water and the other stipulations?

فقال بعض المتكلمين: لا نحكم به حتى نعلم من خارج أن مستجمع للشرائط والأركان ألا ترى أن من أفسد حجة بالجماع قبل الوقوف فهو مأمور بالأداء شرعاً بالمشي على أفعاله مع أنه لا يجوز المؤدى إذا أداد فيقضي من قابل

(والصحيح عند الفقهاء إنه تثبت به صفة الجواز للمأمور به وانغاف الكراهية)

أي المذهب الصحيح عننا أنه تثبت بمجرد إيجاد الفعل صفة الجواز للمأمور به وهو حصول الإمتثال على ما كلف به والا يلزم تكليف ما لا يطلق ثم إذا ظهر الفساد بدليل مستقل بعده يعده

وأما الحج فقد أداه بهذا الإحراز وفرغ عنه والأمر بحج صحيح في العام القابل بأمر مبتدء, وعند أبي بكر الرازي لا تثبت بمطلق الأمر إلغاء الكراهية لأن عصر يومه مأمور بالأداء مع أنه مكره شرعاً والطواف محدثاً مأمور به مع أنه مكره شرعاً

فليزنا ذلك الكراهية ليس في نفس المأمور بل لمعنى خارج وهو الشبيه بعبدا الشمس وكون الطائف محدثاً, مثل هذا غير مصر

(وإذا عدمت صفة الواجب للمأمور به لا تبقى صفة الجواز عندنا خلافاً للشافعي)
Some of the logicians said: "No, we will not describe it with jawaaz (i.e. that it has been passed and the obligation has fallen from him) until he knows from (an) outside (proof) that he had gathered all of the stipulations and pillars. Do you not see that the one who spoils his Hajj by having intercourse prior to Wuqoof is commanded by the Sharee`ah to carry out the rest of the actions (of Hajj), even though these actions he will now carry out (after ruining his Hajj) will not be regarded as jawaaz, but rather, he will have to make qadhaa of it the following year.

The author says:

"The correct view according to the Fuqahaa is that when he does it, it is described with the quality of jawaaz and all reprehensibility falls away."

Meaning, the correct Madh-hab according to us (the Ahnaaf) is that by simply performing the (obligation), it gets the quality of jawaaz (i.e. it is passed) by simply having performed it, and that is by having carried out what was obligated upon the person, for otherwise it would be obligating upon him what is not capable. If thereafter there is evidence of its having been spoiled, he will repeat it.

As for Hajj, then he has carried it out with this ibraam and he has completed it, and the command for Hajj is valid in the following year with a new command. According to Imaam Abu Bakr ar-Raazi, the command alone does not cause the reprehensibility to disappear, because the `Asr of that day, he is commanded to perform by the Sharee`ah even if it is (in the) Makrooh (time), and tawaaf in the state of impurity (i.e. needing wudhoo) is commanded even though it is Makrooh according to the Sharee`ah.

We (the Ahnaaf) say: That reprehensibility is not in the commanded thing itself, but because of an external (factor) which is (in the case of performin `Asr in the Makrooh time) the resembling the worshippers of the sun, and the fact that the person performing tawaaf is impure (in need of wudhoo), and the likes of this does not harm.

The author says:
"When the quality of jawaaz is missing from the commanded thing, then the quality of jawaaz does not remain (either), according to us (Ahnaaf), contrary to ash-Shaafie."

This is another discussion, connected to what was mentioned before, that what is made obligatory by a command is wujoob (obligation), i.e. when an obligation affirmed by a command is abrogated, then does the quality of jawaaz which it contain remain or not?

قال الشافعي: تبقى صفة الجواز إستدلالاً بصوم عاشوراء فإنه قد كان فرضاً ثم نسخت فرضيته
وبقي استحبابه الآن
وعدنا لا تبقى صفة الجواز الثابت في ضمن الوجوب كما أن قطع الأعضاء الخاطئة كان واجباً على بني إسرائيل وقد نسخ منا فرضيته وجوازه وهكذا القياس. وأما صوم عاشوراء فإنهما يثبت جوازه الآن بنص آخر لا بذل ذلك النص الموجب للأداء

وفق: فائدة الخلاف بينا وبينه يظهر في قوله عليه الصلاة السلام: من خلف على يمين فرأى غيّره خيراً منهما فليّبّيهم يميناً ثم ليّبّيهم بالدّي هو خير
فإنّه يدل على وجوه تقديم الكفارة على الحزن وقد نسخ وجوه تقديمها بالإجماع ولكن بقي جوازه عنه ولم نبق عندنا أصلاً

Imaam ash-Shaafi‘ee said: "The quality of jawaaz (permissibility, in this context) remains." And he used as evidence for this the fast of ‘Aashhooraa, because it had been fardh and thereafter its farbiyyat (compulsory status) was abrogated, but the istibbaab (recommendation) remained till now.

According to us (the Ahnaaf), the quality of jawaaz which is established inside of wujoob does not remain, like how it was waajib upon Bani Israa‘eel to cut off the limbs that have committed sin, but (in our Ummah) both the farbiyyat of this as well as its permissibility have been abrogated, and so on. As for the fast of ‘Aashhooraa, then its permissibility is established now with a different nass, not with the nass which had made its fasting waajib.

It has been said that the benefit or purpose of the disagreement between us (the Ahnaaf) and him (Imaam ash-Shaafi‘ee) is made apparent when it comes to the Hadeeth: "Whosoever takes an oath (to do something), but
then he sees that something else is better than it, then let him make *kaffaarah* for his oath and let him go to that which is better."

This Hadeeth points out to the obligation of first performing *kaffaarah* for an oath (that was broken), but then this was abrogated. According to him, the permissibility (*jawaaz*) remains, but according to us, it does not remain.

After the author completed his explanation on the discussions pertaining to the goodness of that which is commanded and what is connected to it, he now begins his explanation on dividing it into *mutlaq* (unrestricted) and *muwaqqat* (restricted to a time), so he says:

"*Amr* (command) is of two types: *mutlaq* `anil waqt (unrestricted by time)."

Meaning, one type is that which is unrestricted by time and thus does not pass by the expiration of time.

The author says:

"Like Zakaah and Sadaqat-ul-Fitr."

Because both of those, after the *sabab* (cause, i.e. for obligation) is found, which is the possessing of the money, and a head (i.e. it is obligatory for himself and for every person under him, such as a wife and children), and the condition, which is the passing of one lunar year (i.e. the *nisaab* has been in his possession for one lunar year), and (it being) the Day of `Eid al-Fitr. It
is not restricted to a time thus expiring by the expiration of that time; rather, whenever he gives it, it is counted as *adaa* (discharging the duty) and not *qadhaa*, although what is *mustababb* (recommended) is to make haste (in discharging it).

The author says:

"It can be delayed, contrary to al-Karkhi."

Meaning, this command (for the discharging of Sadaqat-ul-Fitr), according to us, is one that can be delayed, i.e. it is not *waajib* to discharge it immediately, but rather, there is scope for delaying it, but according to Imaam al-Karkhi رحمة الله عليه, it has to be discharged immediately, as a precaution because it is an `Ibaadah. What he means by this is that the person is sinful if he delays it. He does not mean that if he delays it that it is counted as *qadhaa*."

And according to us, it is not sinful unless in the latter stage of life or when signs of death are observed and it has not been discharged. Our evidence for this is what he said: lest it return to its subject with a negation. Meaning that the subject is valid enough for the facilitation and simplification. If it is valid then he discharged it on account of its subject and the subject of its negation becomes invalid for its subject (and is invalid) (and is invalid)

The second type is a fixed time, which is of four forms: he says:

"If the time for its subject has ended, then it is the first type for the obligation, and a partial obligation for the performance, and a cause for the obligation, and an end for the period (and is invalid)"

Thus the first type is the obligation, and a partial obligation for the performance, and a cause for the obligation, and an end for the period (and is invalid)
The author says:

"And restricted by it (time)."

Meaning, the second type of amr is that which is muqayyad bil-waqt (restricted by time), and it is of four types, because:

"Either (it is such that) the time acts as a container (or time-frame) in which it must be discharged, and a condition for its discharge, and a cause for its (the command) becoming waajib (obligatory)."

That is the first type (of the four types).

The meaning of zharf (container, or time-frame) here is that it is not a mi`yaar for it (i.e. it is not such that, the action is done within it only and the time is restricted to this action) but rather (the time) is more than it. The meaning of shart (condition) is that the commanded thing is invalid before it (the shart) has come about and that it (the command) leaves if it (the shart) leaves. The meaning of sabab (cause) is that this (particular) time has an effect on making the commanded thing obligatory upon the person, even though the Real Cause in every thing is Allaah Ta`alaal (He Himself makes it waajib), but the wujoob has been linked on the outward sense to time, because at every moment in time, some Ni`mah from Allaah Ta`alaal is reached the bondsman, and this necessitates shukr (gratitude unto Allaah Ta`alaal) in every moment.
وإنما خص هذه الأوقات المعينة بالعبادات لعظمتها وتجدد النعم فيها ولن يضي إلى الحرج في تحصيل المعاش إن استغرق الوقت العبادة

(كوقت الصلاة)

فإن الوقت فيها يفضل عن الأداء إذا أدى على حسب حسب السنة من غير إفراط فيكون طففاً ولا يصح الأداء قبل دخول الوقت يفوت يفوته فيكون شرطاً ويختلف الأداء باختلاف صفة الوقت صحةً وكراءةً فيكون سبباً للوجوب

وترقيم المشروط على الشرط جائز إذا كان الشرط شرطاً للوجوب كما في حوالان الحوال للزكاة

أما إذا كان الشرط شرطاً للجواز لا يصح تقديم المشروط عليه كسائل شرائط الصلاة. وترقيم المسبب على السبب لا يجوز أصلاً وها هنا لما اجتمعت الشرطية والسببية فلا جرم أن لا يجوز التقديم على الوقت

These particular times have only been specified for `Ibaadaah because of their honour and to renewal of the Ni`mats in it and so that it does not lead to difficulty in attaining livelihood by all of the time (in a person's life) being taken up by `Ibaadah.

The author says:

"Like the time of Salaah."

Because the time (for each Salaah) is such that, after the discharge of the Salaah there is still time left (i.e. this is the meaning of the zharf not acting as a mi`yaar, but rather, that it is "more than it", i.e. it gives the person enough time in which to discharge it and have time left over) if it is discharged according to the sunnah without going to excess, and thus (this is the meaning of it) being a zharf. It is not valid to perform it before the entry of its time, and with the expiry of its time the action cannot be done, so this is the (meaning of it being) a shart (condition). The discharging of it differs with the differing of the quality of the time, in terms of validity and reprehensibility (i.e. if it is not in the right time, it is invalid, or makroob, etc.) so (this is the meaning of it) being a sabab (cause) for the wujoob.

Putting the mashroot (that which has been stipulated) in front of the shart (condition; stipulation) is permissible if the shart is such that it is a shart
Then, there are two things here (i.e. with regards to Salaah): nafs al-wujoob (the obligation itself), and wujoob al-adaa (the obligation of discharging). With nafs al-wujoob, its true, literal sabab (cause) is (that Allaah Ta`aalaa) made it obligatory, and its outward, apparent sabab (cause), which is the (appointed) time, has been put in place of it. With wujoob al-adaa (the obligation of discharging), its true, literal sabab (cause) is the seeking being connected with the action (i.e. of Salaah), and its outward, apparent sabab (cause), which is the amr (command), has been put in its place.

Then, zharfiyyah and sababiyyah do not join just on the outward alone, because if it (Salaah) is discharged in the (appointed time), then it will not be a sabab, because a sabab always has to come before the musabbab (thing which has been attached to a cause), and if it (Salaah) is not discharged in the (appointed time), then it (the time) will not be a zharf, because zharf is what is discharged in it, not after it. For this reason, they said that zharf refers to the entirety of the time (i.e. the entirety of the time-frame in which a particular Salaah could be performed), and the shart is the time itself, and the sabab is the first portion (of the time) which is connected to the discharging just prior to the commencing of the discharging (of the Salaah).
And the entire (time, i.e. the sabab is the entire time) in the (case of) qadhaa, and it is four types, and the author explained it by saying:

"It is either (such that) it is connected (i.e. its wujoob is connected) to the first part (i.e. the first moments of the time), or (it is connected) to what just follows the beginning of the commencing (of the time), or to the deficient portion in the case of constrictedness of time, or to the entire time altogether."

Meaning, the asl (rule) is that every musabbab is connected to its sabab, so if the Salaah is discharged in the awwal waqt (beginning of the appointed time), the previous part before the (takbeer-e-) tabreemah, and which is the part that does not split (into other parts), will be the sabab (cause) for the obligation of Salaah. Then, if he (the person) does not discharge the Salaah in the awwal waqt, the sababiyah (the cause for the wujoob) transfers to the next parts (of the appointed time), and thus the wujoob will become connected to everything which is after the beginning of the commencing (of the time), of the parts (i.e. parts of time) that are valid. Then, if he still does not discharge it in the parts (i.e. in the times) that are valid, so much so that
the time starts to run out and become constricted, then in this case, the wujoob will become connected to the deficient part (i.e. the makrooh time), but this cannot come about except in the case of `Asr Salaah, because in the rest of the Salaats, all of the parts (of time) are valid. This deficient part (of time), its length is such that one would be able to perform the takbeer-e-tabreemah in it. This is according to us. According to Imaam Zufar, it is long enough to perform in it four raka`aat, so according to him, the sababiyyah does not transfer to what comes after it, because it is contrary to the command and the Sharee`ah. If this last part (of time) is kaamil (complete), as is the case in Fajr Salaah, then it is waajib in full, but if it is hampered by a corruption (of the Salaah), which is the rising of the sun, then the Salaah is nullified and the ruling is that it must be repeated. But, if this part was a deficient part, as is the case in `Asr Salaah, then it will become waajib in a deficient (state as well), and thus if it gets hampered by a corruption (of the Salaah), which is the setting of the sun, the Salaah is not spoiled, because the person has performed it in the manner that it had become waajib.

كان قوله إلى ما يلي إبتداء الشروع شاملاً للجزء الأول وللجزء الناقص. لأن الجزء الأول والجزء الناقص إذا لم يصر سبباً لوجوب الصلاة إذا شرع فيه. أما إذا لم يشرع فيه لم يصر سبباً في ينبغي أن يقتصر عليه إلا أن الجزء الأول لاهتمام شأنه عند الجمهور. صرح به حتى ذهب كل الأئمة سوى أبي حنيفة رحمه الله إلى استحباب الأداء فيه. وكذا الجزء الناقص لأجل خلافية زفر رحمه الله فيه صرح بذكره

The statement of the author, viz., "What just follows the beginning of the commencement (of the Salaah) encompasses both the first part (of the time-frame) as well as the deficient (i.e. last, makrooh) part (of the time-frame), because the first part and the deficient part only become a sabab for the wujoob (obligation) of Salaah if he commences (the Salaah). If he does not commence (the Salaah), then it does not become a sabab (cause), so it would be fitting that he could restrict himself to it (i.e. to any part of the time); however, because of the immense important of the first part (i.e. the awwal waqt) according to the majority of the `Ulamaa, all of the A'immah except for Imaam Abu Haneefah, held the view that it is mustababb for perform the Salaah in the awwal waqt (i.e. as soon as the time comes in, or, the beginning of the time-zone.) The same is the case with the deficient part (i.e. the makrooh time), because of the disagreement of Imaam Zufar regarding it, which he mentioned.
وإذا أدى الصلاة في الوقت فإنه إذا فاتت الصلاة عن الوقت فحينئذ يضاؼ الوجوب إلى جملة الوقت لأنه قد زال الأمانع عن جعل كل الوقت سبباً وهو كونه ظراً للصلاة لأنه لم يبق الوقت. فلما كان كل الوقت سبباً للقضاء، وهو كامل فحينئذ تجب الصلاة كاملة فلا يتآدى إلا في الوقت الكامل وإليه أشار يقوله:

(فلهذا لا يتآدى عصر أمس في الوقت الناقص بخلاف عصر يومه)

يعني فلأجل أن سبب وجوب عصر اليوم هو الوقت الناقص إذا لم يؤده في الأجزاء الصحيحة وسبب وجوب عصر الأمس هو كل الوقت الفائت الكامل. فلنا: لا يتآدى عصر الأمس في الوقت الناقص. لأنه لما فاتت الصلاة عن الوقت كان كل الوقت سبباً وهو كامل باعتبار أكثر أجزائه، وإن كان يشمل على الوقت الناقص فلا يصح قضاؤه إلا في الوقت الكامل.

ويتآدى عصر يومه في الوقت الناقص لأنه لما لم يؤده في الوقت الأول واتصل شروطه في الجزء الناقص كان هو سبباً لوجوده فيدئ ناقصاً كما وجب

All of this applies if he had discharged the Salaah in the (appointed) time. As for if the time for Salaah had expired, then in that case, the wujoob will become attached to the entire of the time-zone (of the Salaah), because now there is no preventer to prevent all of the time becoming a sabab (for the wujoob), because it is a zharf (container or vessel) for the Salaah, because the time no longer remains. Now, if the entirety of the time is a sabab for qadhaa (of the Salaah), and it is kaamil (complete), then in this case, the Salaah becomes waajib in a kaamil (complete) form as well, and thus it must be discharged in the time that is kaamil (complete), and the author had alluded to this by saying:

"For this reason, the `Asr Salaah of yesterday is not to be discharged in the deficient time (i.e. in the makrooh time), contrary to the `Asr Salaah of today."

What he means by this is that, because the sabab (cause) for the wujoob (obligation) of the `Asr of today is the deficient time (i.e. even though it is the makrooh time, because he has not yet performed the Salaah, it acts as a sabab or cause for the Salaah becoming obligatory upon him) because he had not performed the Salaah in the valid parts (of the time-zone). The sabab for the wujoob of the `Asr Salaah of yesterday is the entirety of (yesterday's time-zone of `Asr) which had passed and in a complete (kaamil) form. Thus, we
say: "The `Asr Salaah of yesterday must not be discharged in the deficient (makrooh) time, because, after the Salaah time had expired, the entire time (the time-zone as a whole) became a sabab (for ghabaa), and it is kaamil due to taking into consideration all of its parts, even though it includes the nuaqis (deficient, i.e. makrooh) time as well. It is not valid to make ghabaa of it except in the kaamil (complete) time.

On the other hand, the `Asr Salaah of today will be discharged even in the deficient (makrooh) time, because, he had not discharged the Salaah in the awwal waqt, and thus its commencement has become connected to the deficient (time), so that then becomes the sabab for its wujub, so it is performed in a nuaqis (deficient) way as it had become waajib (in a deficient way).
It is not to be said that, the one who commences his `Asr Salaah in the *awwal waqt* and then prolongs it so long that the sun sets, that this Salaah has been completed in a *naaqs* (deficient) way and his commencement was in the *kaamil* (complete) time. Because, we say: this is so because of the necessity of him having built (his Salaah) upon the `azeemah, and the `azeemah in every Salaah is that it be discharged in the entirety of the time-zone; thus, abstaining from the *karaahah* (reprehensibility) and going towards the `azeemah is something that can never go together, so this portion of the *karaahah* (i.e. the last portion of the time-zone, which is the *makroob* time) is pardoned.

The author says:

"And from its ruling is the stipulating of the *niyyah* of specifying."

Meaning, from the ruling of this type, which is *zharf*, is the stipulating of the *niyyah* of *ta`yeen* (specifying), by the person saying: "I intend (nawaytu) to perform Salaat azh-Zhuhr of today." It is not valid for him to just make an unrestricted *niyyah* (i.e. for him to say, "I intend to perform Salaah.") This is so because the time-zone is a *zharf* (container; vessel) which can have both the actual Salaah (of that time-zone, which is Zhuhr in this case) as well as other, *nawaafil* (optional) Salaats and *qadhaa*, (therefore, if he does not make a *niyyah* specifying what Salaah he is making, it will not be valid.) Therefore, it is *waajib* for him to specify in his *niyyah* (intention).

The author says:

"It does not fall away because of the narrowness of the time."

Meaning, when the time-zone or time-frame becomes narrow because of him having restricted it to the last part of the (time-zone), or because he had been sleeping (and only woke up now when there is a little time left), or
because he had forgotten (and only realised when there is a little time left), still it is his responsibility to do ta’yeen in his niyyah (i.e. to specify what Salaah he is performing), because the narrowness (of the time) has come about because of some extenuating factor, but the asl is that there is spaciousness (in the time, to perform the actual fardh, or nawaafil, or qadhaa).

The author says:

"And it does not become specified with his specifying except if he discharges it."

What he means by this is that, if the person makes a verbal (as well as an intention in the heart) intention at the beginning, middle or end of the time-zone, that he is performing such-and-such Salaah, then no specification has taken place unless he actually discharges (that Salaah which he had specified in his intention). In whichever time (from the time-zone) he discharges the Salaah, that time will be the specified time, even if he does not discharge it in the time that he had specified, but rather, he had discharged it (even) at the end of the time-zone, it will not be termed qadhaa.

The author says:

"Like the one who breaks his oath."

Because, the person who breaks his oath gets to choose one of three things: feeding 10 poor people, or clothing them, or freeing a slave.
وقيل: الأيام فقط دون الليل.
ثم قيل: الجزء الأكبر من الشهر سبب لصومه على حدة.
وقيل: أول كل يوم سبب لصومه.
ودام وجه ذلك في التفسير الأحمدي.

 ولم يذكر هاهنا كونه شرطاً للأداء مع أنه شرط للأداء أيضاً إكثافةً بالقرآن.

ثم فرع على كونه معياراً فقال:

(فصدّر غيره منفياً)

أي لما كان شهر رمضان معياً للصوم يصير غير الفرض منفاً في رمضان كما قال عليه الصلاة وسلام: إذا أسلخت شعبان فلا صوم إلا عن رمضان.

If he specifies one of the three verbally or in his heart, it is not specified to Allaah Ta’ala so long as he has not discharged it. Once he has discharged it, it now becomes munta`ayyan (specified). If he discharges other than what he had specified first (i.e. such as by specifying feeding but then freeing a slave instead), it is still discharged.

The author says:

"Or, it is a mi`yaar (container) for it and a sabab (cause) for its wujoob (obligation), like the month of Ramadhaan."

This is coupled to his earlier statement: "Either it is a zharf..." This is the second type from the four types of muwaggat (something restricted by time), and there is no difference between it and the first type except that the first type if a zharf and this type is a mi`yaar, and a mi`yaar is such a thing which completely encompasses the time and is not in excess of it, so it lengthens with its lengthening and shortens with its shortening, because fasting lengthens with the lengthening of the day and shortens with the shortening (of the day), and thus it is a mi`yaar for it and a sabab for its wujoob also, and there is disagreement concerning it, so it has been said: "The entire month (of Ramadhaan) is a sabab for the wujoob of fasting."

It has also been said: "Only the days are a sabab, not the nights."
It has also been said: "The first part of the month acts as a *sabab* for the obligation of fasting the rest of the month."

It has also been said: "The beginning of each day (of Ramadhaan) acts as a *sabab* for the fasting of just that day."

We have mentioned all of that in *at-Tafseer al-Ahmadi*.

It's being a *shart* (condition) for the discharging has not been mentioned here despite the fact that it is also a *shart* for the *adaa* (discharging), (and the reason it has not been mentioned) is because the similarities are sufficient (i.e. it is already known).

Thereafter, the author branches off into the issue of it being a *mi`yaar*, so he says:

"So other than it becomes negated."

Meaning, because the month of Ramadhaan acts as a *mi`yaar* for fasting, then, other than the *fardh* is negated in Ramadhaan, like Rasoolullah صلی اللہ علیو و وسلم said: "When the month of Sha`baan ends, then there is no fast except (that of) Ramadhaan."

There is no stipulation (when it comes to fasting in Ramadhaan) that a person must do *ta`yeen* (specifying), such as by saying: "I intend to fast tomorrow, for the fardh of Ramadhaan." This is because, this kind of *ta`yeen* (specification) was only legislated when it comes to Salaah because with Salaah, the *waqt* (time-zone) is a *zharf*, and thus it (is large enough) to encompass both the (fardh Salaah) as well as other than it (other *nawafil* or *qadhaa*, so therefore specifying is necessary), but that is not the case here (because Ramadhaan acts as a *mi`yaar*, so for the entire month it is not possible to fast other than the fast of Ramadhaan, so there is no need to specify because there is no possibility of performing a different fast anyway).
Imaam ash-Shaafi`ee said: "Ta`een (specifying) is necessary in the niyyah (for fasting as well)." (His view was based on) qiyaas (analogical deduction) on the issue of Salaah.

وقال زفر رحمه الله: لا حاجة إلى أصل النية أيضاً لأنه معين بتعيين الله تعالى

وخير الأمور أوسطها وهو فيما قلنا

(فيصاب بمطلق الاسم ومع الخطأ في الوصف)

فيعظ على سبق أي فيصاب صوم رمضان بمطلق اسم الصوم بأن يقول: نوتب الصوم. ومع الخطأ

والمراد بهذا الخطأ ضد الصواب لا ضد العمد. فإن العامد والمخطئ سواء في هذا الحكم

(بلا في المسافر ينوي واجباً آخر عند أبي حنيفة رحمه الله)

إستثناء من مقدر أي يصاب رمضان مع الخطأ في الوصف في حق كل واحد إلا في المسافر

حال كونه ينوي في رمضان واجباً آخر من القضاء والكفارة. فإنه يقع عما نوى لا عن رمضان عند

أبي حنيفة رحمه الله. لأن وجوب الأداء لما سقط في حقه يتخبر بعد ذلك بين الأكمل وبين

واجب آخر

Imaam Zufar رحمه الله عليه said: "There is no need for even an intention (niyyah), because it has already been specified by Allaah Ta`alaalaa."

The best of matters is the middle path, and it (the middle path) is in what we have said.

The author says:

"So he will reach (the fast of Ramadhaan) simply by using the word, and (even) with an error in the description."

This is a branching off with regards to something mentioned earlier. What he means is that, the person reaches the fast of Ramadhaan simply by (in his intention) using the word sawm (fasting), such as by saying, "I intend to
"Except for the traveller who intends a different waajib, according to Abu Hanefeh رحمة الله عليه."

What he means by this is that, even if a person makes an error in his description, it is still counted as a fast from Ramadhaan, and this is the case with every single person except for the musaafir (traveller), because he can intend - in the month of Ramadhaan - a fast from a different waajib or a qadhaa fast or a kaffaarah, and it will be counted as what he had intended and not as a fast from Ramadhaan, according to Imaam Abu Haneefah رحمة الله عليه. This is so because the obligation of discharging (the fasting of Ramadhaan) has fallen (from his responsibility, on account of him being a traveller) and thus he gets the choice between eating or fasting a different waajib (fast).

والعدهما لا يصح لأن شهود شهر موجود في حقه كالمقيم وإنما رخص له بالإفطار لليسر فإذا لم يترخص عاد حكمو إلى الأصل فلا يقع عما نوى بل عن رمضان وهذا المسافر متلبس بخلاف المريض)

فإنه إن نوى نفلاً أو واجباً آخر لم يقع عما نوى لأن رخصته متعلقة بحقيقة العجز لا العجز التقديري. فإذا صام وتحمل المحنة على نفسه علم أنه لم يكن عاجزاً فيقع عن رمضان وهذا هو المختار

وقبل: رخصته أيضاً متعلقة بالعجز التقديري وهو خوف زيادة المرض فهو كالمسافر. وقيل في التطبيق بينهما: أن المريض الذي يضرب به الصوم كمرض حمى البرد ووجع العين فرحصته متعلقة
According to Imaam Abu Yusuf and Imaam Muhammad, it is not valid because the "witnessing of the month" is still present in his case, just as it is for the muqeem (resident). The only reason he has been offered a rukhsab (concession) to eat is for the sake of making it easy for him, so if he does not take this rukhsab (concession), then the original ruling returns, and thus his fast will be regarded as a fast from Ramadhaan and not for what he had intended, and this traveller is guilty.

The author says:

"Contrary to the sick person."

Because if a sick person intends - in Ramadhaan - a nafl fast or a different waajib fast, his fast will not be regarded as that which he had intended, because his rukhsab (concession) to not fast is connected to a real incapability (on account of illness) not an assumed (or suspected) illness. Thus, if he fasts and takes it upon himself, it becomes known that he was not incapable (of fasting), and thus his fast is regarded as a fast of Ramadhaan, and this is the chosen view.
The author says:

"There are two narrations pertaining to (a sick person) performing nafs."

This is connected to his statement: "If he intends a different waajib."

Meaning, with regards to a musaafir (traveller) intending a nafs (fast), there are two views narrated from Imaam Abu Haneefah رحمة الله عليه. In the riwayat (narration) of al-Hasan (ibn Ziyaad al-Lu'lu'i), it is mentioned that (if a traveller makes niyyah for a nafs fast) his fast will fall according to what he had intended (i.e. it will be regarded as a nafs fast). According to the riwayat of ibn Samaa'ah, his fast (even if he had intended nafs) will be regarded as a fast from Ramadhaan. This difference of opinion is based on two different proofs which have been narrated from Imaam Abu Haneefah رحمة الله عليه.

The first daleel (proof) is that, because Allaah Ta`ala gave this person a rukhsah (concession) to eat, then Ramadhaan to (this person) becomes like Sha`baan, and in Sha`baan, a nafs fast is valid. The second daleel (proof) is that the reason he has been given rukhsah (concession) to eat (instead of fast) is for the sake of bodily benefits, by resting. Then, for him to attain Deeni benefits is even better, such as by him doing qadbaa of those fasts which are binding upon him, or kaffaarab, because if he were to die during this Ramadhaan, he will not be punished for having not fasted it, but he will be punished on account of those qadbaa fasts and kaffaarab which he had not performed. Nafs, however, is not more important than the Deeni benefits (which he would get by doing qadbaa fasts or kaffaarab), nor is it more important (in this state of his) than his worldly benefits (by resting, so nafs will not be performed).
The author says:

"Or it is a mi`yar for it, not a sabab, like the qadhaa of Ramadhaan."

This is coupled to the previous (statement), and this is the third type from the four types of muwaqqat, because the time of qadhaa is a mi`yar (container for it) undoubtedly, and the sabab for its wujoob is the witnessing of the previous month (i.e. last year’s Ramadhaan), not these days (i.e. this year’s Ramadhaan). So, the sabab for qadhaa is the sabab for adaa, and the condition of its shartiyyab (being a stipulation) is not known, and what is apparent is its absence, because if no specific time is known, then any time will be its shart.

In some manuscripts it appears: "And the unrestricted vow (nadhr)."
Because, its time is a mi`yar (container) for it and is not a sabab for its wujoob, but rather, the sabab is the nadhr (vow). As for a specific vow (an-nadhr al-mu`ayyan), then it has been said: "It is a partner to the unrestricted vow (an-nadhr al-mutlaq) in this meaning (i.e. in the time being a mi`yar for it) and it only opposes it in some of its rulings, and that is, the stipulation of the niyyab (intention) of ta`yeen (specifying) in (an-nadhr) al-mutlaq and that it (an-nadhr al-mutlaq) does not carry the possibility of being missed, and for this reason it has been restricted by it. What is apparent is that an-nadhr al-mu`ayyan (the specific vow) is similar to Ramadhaan in that the days act as a mi`yar for it and a sabab for its wujoob after he has made obligatory upon himself in these days, even if they say that the nadhr (vow) is the sabab for the wujoob.

والحاصل أن النذر المعين شريك لرمضان في بعض الأحكام ولقضاء رمضان في بعض آخر. فالحق بأيهما شئت

صاحب المنتخب الحساني جعل النذر المعين من جنس صوم رمضان ولم يذكر قضاء رمضان
والنذر المطلق من أقسام الأمر المفيد بل هو مطلق من قبل الزكاة وصدقة الفطر، من أدخلهما
في المقيد نظر إلى أنهما مفيدان بالأيام دون البالي والهذا تحل

(وتشترط فيه نية المعين ولا يحتتم الفوات بخلاف الأولين)
The summary of this is that the specific vow (an-nadhr al-mu`ayyan) is similar to Ramadhaan in some of its rulings and similar to qadhaa of Ramadhaan in some other rulings, so link it to whichever of the two you want to.

The author of al-Muntakhab al-Husaami has put an-nadhr al-mu`ayyan (the specific vow) as being of the same jins (species) as the fast of Ramadhaan and he has not mentioned qadhaa of Ramadhaan, and an-nadhr al-mutlaq (the unrestricted vow) is from the categories of al-Amr al-Muqayyad (the restricted command); rather, it is mutlaq (unrestricted) like Zakaah and Sadaqat-ul-Fitr. The one who considers them to be muqayyad (restricted) does so because he looks at the fact that they are muqayyad (restricted) to the days and not the nights, but this is seeking (excuses, i.e. incorrect).

The author says:

"And stipulated in it is the niyyah of ta`yeen (specifying) and it does not carry the possibility of fawaat (being missed), contrary to the first two."

Meaning, stipulated in this third category of muwaqqat is the niyyah of ta`yeen (specifying), by the person saying, "I intend qadhaa." or: "I intend nadhr (a vow)." It is not discharged by simply making an (unspecified) intention, because there is crowding in these days because qadhaa is unrestricted from time, and nor (is it discharged) by the niyyah of nafl (voluntary) or a different waajib.

The author says:

"Similarly, stipulated in it is tabyeet."
(What the author means by $tabyeet$ is) making the intention in the night, because what is besides Ramadhaan, all of it is the place (time) for $nafl$ (optional fast), so all abstainings will fall as $nafl$ if the person does not specify (in his intention) at night for a different (i.e. not $nafl$) fast, which is the $qadhaa$ or the $kaffaarah$.

والنذر المطلق بخلاف النذر المعين فإنه يتأدى بمطلق النية، ونية النفل ولكن لا يتأدى بية الواجب آخر ولا يشترط فيه البيت لأنه معين في نفسه كرمضاف لا يقع الإمساك المطلق إلا عليه ما لم يصرفه إلى واجب آخر، وأيضاً لا يحتتم هذا القسم الثالث الفوات بل كلما صام له يكون مؤدياً لأن كل العمر محل له عندنا

وعند الشافعي رحمه الله إن لم يقض رمضان حتى جاء رمضان آخر تجب عليه الفدية مع القضاء جبراً عليه الكمال والتهاون (بخلاف)

الأولين

(القسمين)

وهما الصلاة والصووم فإنهمما يحتملان الفوات إذا لم يؤدىهما في الوقت المعهود فيكون قضاءً

(أو يكون مشكلاً يشبه المعيار والظرف كالحج)

عطف على ما سبق وهو النوع الرابع من أنواع الوقت يعني أو يكون وقت المؤقت مشكلاً أي مشتبه الحال يشبه المعيار من وجه والظرف من وجه ونظيره وقت الحج، فإنه مشكل بهذا المعنى وذلك من وجهين

الأول إن وقت الحج شوال وذوالقعدة وعشرة ذي الحجة والحج لا يؤدي إلا في بعض عشيرة ذي الحجة فتكون الوقت فاضلاً فمن هذا الوجه يكون ظرفاً
The unrestricted vow is different to the specific vow, because it is discharged with just the *niyyah* alone, and with the *niyyah* of *nafl*, but it is not discharged with the *niyyah* of a different *waajib* (i.e. like *qadhaa* or *kaafarah*), and there is no stipulation in it of *tabyeet* (making the *niyyah* at night) because it is already *mu`ayyan* (specified) in itself, like (how in) Ramadhaan (any fast performed) unrestricted (from a specific *niyyah*) does not fall (i.e. count) except upon it (i.e. as a fast of Ramadhaan) so long as he (the person) does not divert it (the fast) to a different *waajib*. Also, this third category does not carry the possibility of *fawaat* (being missed); rather, whenever he fasts it, it will be counted as *adaa*, because his entire lifetime is the place (and time) for performing it, according to us (Ahnaaf).

According to Imaam ash-Shaafi’ee رحمة الله عليه, if he does not make *qadhaa* of Ramadhaan until the next Ramadhaan comes, then *fidyah* will become *waajib* upon him along with the *qadhaa*, as a punishment for his laziness and his treating (the *qadhaa*) lightly.

The author says:

"Contrary (to)."

The two types.

"The first (i.e. the first two categories)."
And those two (categories) are Salaah and fasting, because both of them carry the possibility of *fawaat* (being missed out) if the person does not discharge them in the appointed time, for then they will become *qadhaa*.

The author says:

"Or it becomes obscure, resembling *mi`yaar* and *zharf*, like Hajj."

This is coupled to what has preceded, and this is the fourth type from the four categories of *mu`aqqaat* (restricted by time), i.e. or the time of the *mu`aqqaat* becomes difficult (obscure), i.e. obscure in its condition, resembling a *mi`yaar* from one facet and a *zharf* from another facet, and it is like the time of Hajj, because it is similar to this meaning and that one from two facets.

The first is that, the type of Hajj is Shawwaal, Dhu-l Qa`dah and the first 10 days of Dhu-l Hijjah; however, Hajj is not discharged except in part of the 10 days of Dhu-l Hijjah, and so the rest of the time-zone is excess (extra), so from this angle it (the time-zone of Hajj) is a *zharf*. 

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From the aspect that, it is not possible to perform during this time-frame except one Hajj, it is a *mi`yaar*, contrary to Salaah, because in one Salaah time it is possible to perform different Salaats.

The second thing is that Hajj becomes *fardh* only once ever in the lifetime of a person; so, if he catches the second year, and the third year, then the *waqt* (time) is spacious enough for him to discharge (the obligation of Hajj) in any time that he wishes. However, if he does not catch the second year, such as by dying (before then), then the time is constricted, and it is necessary for him to discharge it in the first year. However, Imaam Abu Yusuf has taken into consideration the aspect of the constriction of time (i.e. he has looked at the fact that this person can die within the very first year that Hajj is *fardh* upon him, and has based his ruling on that), and Imaam Muhammad has taken into consideration the aspect of spaciousness of time (i.e. he has looked at the fact that Hajj is only ever *fardh* once, and a person has his entire lifetime to perform it, and so he has based his ruling on that). This is derived from what the author has said:
"From the first year, the months of Hajj are specific according to Abu Yusuf (i.e. he must perform Hajj during the very first year that it is fardh upon him), contrary to Muhammad.

What he means by this is that, according to Imaam Abu Yusuf, it is necessary that the person discharges the obligation of Hajj in the very first year that it becomes fardh on him, and he bases this on ihtiyaat (caution), in order to avoid fawaat (missing out on discharging the obligation), because living long enough to reach the second year is something that is doubtful, and the time is long.

According to Imaam Muhammad, the person has been granted concession to delay the discharging of the obligation of Hajj until the following year (or following years), on condition that he will not miss out on discharging it.

(وثبت أبا يوسف رحمه الله على أن المولى ذهب إلى العام الأول يصر فاسقاً مردود الشهادة
وعند أبي يوسف رحمه الله ثم إذا أداه في العام الثاني يرتفع عنه الائت تقبل شهادته وهكذا في كل عام
وعند محمد رحمه الله لا يأثم إلا عند الموت أو ادرائ علاماته ولا يكون مردود الشهادة ولكن كلما أدى يكون أداءً عند الفريقين لا قضاءً

(وبثأبات الإختيار الذي يو شرط في العبادات والحج

هذا من حكم كونه مشكلاً أي إن أدى الحج بمطلق النية بأن يقول نويت الحج يقع عن الفرض
بخلاف ما إذا قال نويت حج النفل فإنه يقع عن النفل
وقال الشافعي رحمه الله يعفها عن الفرض أيضاً لأنه سفيه يجب أن يحج عليه ولا يقبل تصرفه

فنا: هذا يبطل الاختيار الذي هو شرط في العبادات والحج"
The fruit of the disagreement (between them) becomes apparent when it comes to the issue of sin, because, if this person does not discharge the obligation of Hajj within the first year that it became fardh upon him, then according to Imaam Abu Yusuf, he becomes a faasiq and his testimony is rejected (he becomes mardood-ush-shahaadah). Thereafter, if he discharges the obligation within the second year, the sin is lifted from him and his testimony is once again accepted, and this is the case regardless of which year he discharges it in.

According to Imaam Muhammad, he is not sinful except at the time of death (if he had not discharged it), or when the signs of death appear, but he does not become mardood-ush-shahaadah. However, according to both of them, no matter which year he discharges it, it is regarded as adaa and not as qadhaa.

The author says:

"And it (Hajj) is discharged simply by an unrestricted intention, not by the intention of nafl." This is on account of its being obscure, i.e. if the Hajj is discharged by an unrestricted intention, such as by the person saying, "I intend Hajj." it will be regarded as referring to the fardh Hajj, contrary to if he were to say, "I intend to perform a nafl Hajj." for in that case, it would be regarded as nafl, not as fardh.

However, Imaam ash-Shaafi`ee says that even if he makes the intention for nafl, it will still be counted as fardh, because he is a safeeb (foolish person, incapable of logical thought, hence he would make such a foolish decision) and therefore he is restricted (yuhjar `alayhi, i.e. he is like the safeeb who is restricted from using wealth as he wishes, but rather, a wali will deal with the transactions on his behalf, taking care of him) and his choosing (it to be nafl) will not be accepted.
We (the Ahnaaf) say: "This would nullify the choice (every person has) which is a shart (condition) in all `Ibaadaat as well as Hajj."

The summary of all this is that, because Hajj resembles a mi`yar as well as a zbarf, it takes a resemblance from each of the two, and therefore, from the aspect of it being a mi`yar, it will take a resemblance from fasting and thus it will be discharged by an unrestricted niyyah (intention), just as fasting (in Ramadhaan) is, and from the aspect of it being a zbarf, it will take a resemblance with Salaah, and thus it will not be discharged if the niyyah made was that of nafl (optional), and it is necessary to be understood in this manner.

Thereafter, once the author completed his discussion on mutlaq and muwaqqat, he now commences his explanation on whether or not the Commands (of the Sharee`ah) are directed at the Kuffaar or not, so he says:

(والكفار مشاطرون بالأمر بالإيمن وبالمشروع من العقوبات والمعاملات)

لأن الأمر بالإيمن في الواقع لا يكون إلا للكفار، وأما للمؤمنين كما في قوله تعالى:

يا أيها الذين آمنوا آمنوا

فإنما يراد به اللاعب على الإيمن والإستقامة عليه أو مواطنة القلب للناس، أو نحو ذلك وكذاهم أليق بالعقوبات لأن العقوبات وهي الحدود والقصاص إذا كانت تجري على المسلمين أجل النظام العالم ومصلحة البقاء والزجر عن المعاصي فالكفار أولى بهما سبباً عند أبي حنيفة رحمه الله، لأن الحدود والكافرات عنده زاجرة للناس عن الارتكاب لا سلامة ومؤذنة للمعاصية، وأما المعاملات فهي دائرة بيننا وبينهم فينطغي أني نتعامل معهم حسب ما تعاملنا بيننا في البيع والشراء والاجراء وغيرها سوى الخمر والخنزير فإنهما مباحان لهم لا لنا وإنما أشا عليه الصلاة والسلام بقوله:

الخمر لَهُمْ كَالْخَمْرِ لَنَا وَالْخِنزِيرُ لَهُمْ كَالْخَنزِيرِ لَنَا

وإنما بذلوا الحزمة ليكون دماؤهم كدمائنا وأموالهم كأموالنا.

The author says:
"The Kuffaar are addressed with the command to have Imaan, and they are (also bound) by the legislated matters (in the Sharee’ah), like the prescribed punishments, and the transactions."

This is because the command to have Imaan, in reality, is not addressed except at the Kuffaar. As for the Mu'mineen, like in the Aayah:

{"O you who have Imaan, bring Imaan..."}

Then, the intended meaning of this is to have firmness upon Imaan, and istiqamaab upon it, or, the intended meaning is that the heart should correspond to the tongue, or similar to that. Similarly, they are more deserving of the prescribed punishments because the prescribed punishments, which are the budood (literally "limits") and qisaas (retribution), if they are imposed upon the Muslims for the sake of the world running in an organised manner, and for the benefit of remaining, and to deter people from sin, then the Kuffaar are more deserving of this, especially according to Imaam Abu Haneefah رحمه الله عليه, because according to him, the purpose of the kaffaaraat and the budood is to deter people from perpetrating sins, (and they are not for the purpose of) concealing or removing sins. As for mu’aamalaat (transactions), then this applies between us and them, so it is necessary that we deal with them (in business dealings) as we deal with one another, with regards to buying, selling, leasing, etc., except for alcohol and swine, because that is mubaah (permissible) for them but not for us, and this has been pointed out to by Rasoolullah صلی الله عليه وسلم when he said:

"Khamr (alcohol) for them is like vinegar for us, and khinzeer (swine) for them is like a sheep for us."

They are commanded to pay the jizyah so that their blood becomes like our blood (i.e. it becomes haraam) and their wealth like our wealth.
The author says:

"And with the Sharee`ah, in that they will be taken to task in the Aakhirah, and there is no disagreement upon this."

What he means is that the Kuffaar are addressed by the commands of the Sharee`ah as well, which is fasting, Salaah, Zakaah, Hajj, in the meaning that, they will be taken to task (for not discharging these duties) in the Aakhirah, and there is unanimous agreement regarding this between us and Imaam ash-Shaafi`ee رحمه الله, because they (the Kuffaar) are punished for not believing in these fara`idh and waajibaat just as they will be punished for having not believed in the actual Imaan itself, like Allaah Ta`alaa says:

{"What has caused you to enter Saqar (Jahannam)? They will say: "We were not from those who performed Salaah, nor did we feed the poor."}"

Meaning, we were not from those who believed in the obligatoriness of Salaah and Zakaah. This is as they (the `Ulamaa) have said, and I have explained this issue in further detail in at-Tafseer al-Ahmadi.

The author says:

"As for the obligation of discharging (these duties) in the Dunyaa, then this is the opinion of some (`Ulamaa)."
Meaning, they are addressed with the command to discharge the `Ibaadaat in the Dunyaa also, according to some of the Mashaayikh of Iraq and most of the companions of Imaam ash-Shaafi`ee.

But, this is an enormous mistake of the people, because Imaam ash-Shaafi`ee did not say that if they discharge (these duties) it is valid whilst they are in the state of Kufr, and nor did he say it is *waajib* upon them to make *qadhaa* of it after accepting Islaam, so what then is the meaning of "the obligation of discharging (these duties) in the Dunyaa"? For this reason, they have interpreted his speech to mean that the meaning of the (commands) being addressed at them is that it means, "Bring Imaan, and thereafter perform Salaah." So, Imaan has been hidden (in the sentence) as a necessity, followed up by `Ibaadaat.

وثمرت أنهم يؤاخذون عنده في الآخرة بترك فعل الصلاة كما يعذبون بترك اعتقاد إتفاقاً فلو لم يكونوا مخاطبين بأداء العبادات في الدنيا لما عذّبوا في الآخرة بتركها.

وشرمه أنهم يؤخذون عنده في الآخرة بترك فعل الصلاة كما يعذبون بترك اعتقاد إتفاقاً فلو لم يكونوا مخاطبين بأداء العبادات في الدنيا لما عذّبوا في الآخرة بتركها.

وهل هذا غاية ما قبل في النواحي في تحقيق هذا المقام:

والصحيح أنهم لا يخاطبون بأداء ما يحتتم السقوط من العبادات.

أي المذهب الصحيح لنا أن الكفار لا يخاطبون بأداء العبادات التي تحتتم السقوط مثل الصلاة والصوام. فإنهم يسقطون عن أهل الإسلام بالحيض والنفاس ونحوهما لقوله عليه الصلاة والسلام لمعاذ حين بعثه إلى اليمن:

لِأتَيِّقَانُمُّ مِّنْ أَهْلِ الْكِتَابِ فَادْعُهُمْ إِلَى شَهَادَةِ أَنَّ اللَّهَ إِلَّاَ اللَّهُ وَأَنَّى رَسُولُ اللَّهِ. فَإِفْ أُمُّ أطَاعُوْنَ فَأَعْلِمْهُمْ أَنَّ اللهَ فَرْضَ عَلَيْهِمْ خَمْسَ صَلَوَاتٍ فِيْ كُلِّ يَوْمٍ وَّلَيْلَةٍ.

الحديث

فإنّه تصريح بأنهم لا يكلفون بالعبادات إلا بعد الإيمان.

وأما الإيمان فلما لم يحتتم السقوط من أحد لاجرم كانوا مخاطبين به.
The fruit (of this disagreement) is that, according to him, they will be taken to task in the Aakhirah for having not performed Salaah just as they will be punished for not believing in it, and this is something on which there is unanimity. So, if they were not addressed by the command to discharge these `Ibaadaat in the Dunyaa, then why would they be punished in the Aakhirah for not having done it?

This is the most of what has been mentioned in at-Talweeb (the sharh of at-Tawdheeh) regarding this issue.

The author says:

"The correct view is that they are not addressed by the command to discharge those `Ibaadaat which have the possibility of dropping off."

What he means is that, the correct Madh-hab according to us is that the Kuffaar are not addressed by the command to discharge the `Ibaadaat which have the possibility of dropping off, like Salaah and fasting, because they drop away even from the Muslims in the cases of haidh and nifaas, etc., because Rasoolullah صلى الله عليه وسلم said to Hadhrat Mu`aadh رضي الله عنه when he sent him to Yemen:

"You will come to a people from the Ahl-e-Kitaab, so call them to the Shibaadah (testification) that there is no Ilaah but Allaah and that I am the Rasool of Allaah. If they obey you (in that), then inform them that Allaah has made obligatory upon them five Salaats in every day and night..." [Al-Hadeeth]

This is a clear statement showing that they have not been made mukallaf to discharge those `Ibaadaat except after bringing Imaan.

As for Imaan, then, because is does not have the possibility of falling away from anyone, there is no doubt that they have been addressed by the command to bring Imaan.

After the author رحمة الله عليه completed his discussion on the types of amr, he now begins (a new discussion) on the types of nabi (prohibition), so he says:
The author says:

"And from it (i.e. *khaas*) is *an-Nabi* (prohibition), and that is saying," i.e., a person saying, "to another, regarding himself as being higher (i.e. higher in authority, etc.), 'Do not do (this)."

What he means is that *nabi* is like *amr* in that it is part of *khaas*, because it is a term used for a specific, known meaning, and that is (in the case of *nabi*): *at-Tabreem* (to prohibit or make something *baraam*), and the rest of the restrictions are like what has passed when it came to *amr*, except that he has used the words "Do not do" in place of the word: "Do." And this *nabi* encompasses the second-person, the third-person and the speaker, and it encompasses *ma`roof* and *majhool*.

The author says:

"It necessitates that the quality of ugliness or badness exists within the thing being prohibited, as this is necessitated by the wisdom of the prohibiter."
What he means is that a wise man (bakeem) will not prohibit something unless it is from that which is shameless and evil, just as when it comes to amr, the wise man will not order except that which is good.

Thereafter, know that nabi has different categories or types which are proportionate to the level of the badness (or ugliness), and that is, either a thing is qabeeb li-`aynibi (bad in and of itself) or qabeeb li-ghayribi (bad because of something else), and each of these are of two types, so they are four types altogether, as the author explained with his statement:

أي المنهي عنه المفهوم من النهي
(إما أن يكون قبيحاً لعينه)
أي تكون ذاته قبيحة بقطع النظر عن الأوصاف اللازمة والعوارض المجاورة
(والذالك نوعان: وضعاً وشرعاً)
أي الأول من حيث أنه وضع للقبيح العقلي بقطع النظر عن ورود الشرع، والثاني من حيث أن الشرع ورد وإلا فالعقل يجوزه
(أو لغيره)
عطط على قوله: لعينه
(والذالك نوعان: وصفاً، ومجاورة)
يعني أن النوع الأول ما يكون القبيح وصفًا للمنهي عنه أي لازماً غير منفك عنه كالوصف، والنوع الثاني ما يكون القبيح فيه مجاوراً للممنهي عنه في بعض الأحيان ومنفكًا عنه في بعض آخر
(كالكفر وبيع الحر وصوم يوم القدر والبيع وقت النيابة)
The author says:

"And it..." i.e. the thing which is prohibited (al-manbi `anhu), the thing which is understood from the prohibition, "is either qabeeb li-`aynibi (ugly and bad in and of itself)" i.e. its very being is ugly and evil, without even looking at its qualities and accompanying factors. "And that is of two types: (according to) meaning and (according to) the Sharee`ah." i.e. the first type is qabeeb li-`aynibi from the facet that, it was placed for something that is evil logically, i.e. its evil can be understood by logic without looking at what the Sharee`ah has said about it. The second type is such a thing that its evilness is understood because the Sharee`ah has said so, and if it hadn't, logic would have deemed it to be permissible.

The author says:

"Or (qabeeb) li-ghayrihi (such a thing which is evil because of something else)."

This is coupled to his statement: "li-`aynibi."

The author says:

"And that is of two types: descriptive, and concomitant."

What he means is that, the first type of that which is qabeeb li-ghayrihi is that in which the badness is a description of the prohibited thing, meaning, it is bound to it and does not depart from it, like a description. The second type is that in which the evil accompanies the prohibited thing sometimes and is not present with it at other times.

The author says:

"Like Kufr, and selling silk, and fasting on the Day of an-Nahr, and selling at the time of the call (i.e. Adhaan)."
These are examples of the four types, using the order of laff and nasr (explained earlier on in this book).

Kufr is an example of something which is qabeeh li-`aynibi (evil in and of itself), in placement, because it was placed for a meaning which is evil in the very root of its placement, and logic deems it to be haraam even if the Sharee`ah had not mentioned anything about it, because the ugliness and evilness of bein ungrateful to the one who bestows favours upon you is something that is understood by the intellects that are sound.

The selling of silk is an example of something that is qabeeh li-`aynibi, according to the Sharee`ah, and that is because bay` (selling) was not placed in language for a meaning that is evil, which the intellect deems to be evil, but rather, the evilness in it is because the Sharee`ah has defined bay` (transaction) as the exchange of wealth for wealth, and silk is not wealth according to him.

Similarly, the Salaah of a person who is impure (muhdith) is evil because the Lawgiver has excluded the muhdith from being fit for discharging it.

Fasting on the Day of Nahr is an example of that which is qabeeb li-ghayrhibi, in a descriptive sense, because fasting in and of itself is an `Ibaadah and holding back (from food, drinks, marital relations) for the sake of Allaah Ta`aala, but it is haraam because of the fact that the Day of Nahr is a day in which people are the guests of Allaah Ta`aala, and to fast is to turn away from that, and this meaning is bound (to it) on the level of a description for this fast, because time enters into the definition of fasting and the description of a part is the description for the entire thing, so it is spoiled and he is not bound to commence (it), contrary to a vow (nadhr), because it
(the vow) in itself is obedience, and there is no corruption in naming (i.e. there is no corruption in a person simply naming a certain day to fast, as a vow), but rather, the *fisaad* (corruption) lies in the action (of fasting on the Day of *Nahr*), so it is necessary to make *qadbaa* of it (this fast that was vowed to be performed on the Day of *Nahr*, it must be made *qadbaa* of on some other day). It is also different from Salaah performed in the *makroob* times, because even though it is from this type as well, but, the *waqt* (timezone) does not enter into its definition nor does it act as a *mi`yaar* (container) for it, and thus Salaah performed at those times will not be invalid, but will be *makroob* which becomes binding to perform once it has been commenced and *waajib* to make *qadbaa* of if that commenced Salaah is then spoiled (i.e. the person’s wudhoo breaks, or he breaks the Salaah, he has to make *qadbaa* of it).

والبيع وقت النداء مثل لما قبح لغيره مجاوراً فإن البيع في ذاته أمر مشروع مفيد للملك وإنما يحرم وقت النداء لأن فيه ترك السعي إلى الجمعة الواجب بقوله تعالى:

فاضغوا إلى ذكر الله وذَرُوا البيع

وهو المعني مما يجاور البيع في بعض الأحيان فيما إذا باع وترك السعي وينفك عنه في بعض الأحيان فيما إذا سعى إلى الجمعة وبايع في الطريق بأن يكون البائع والمشتري راكبين في سفينة تذهب إلى الجامع.

وفيما إذا لم يبيع ولم يسع إلى الجمعة بل استغل باللهو آخر

فهذا البيع كبيع الغاصب يفيد الملك بعد القبض

ومثله وطىء الحائض مشروع من حيث أنها منكوحة وإنما يحرم لأجل الأذى, وهو مما يمكن أن ينفك عن الوطأء بأن يوجد الوطأء بدون الأذى, والأذى بدون الوطأء

وكذا الصلاة في الأرض المغصوبة مشروعة في ذاتها وإنما تحرم لأجل شغل ملك الفيل وهو مما ينفك عن الصلاة بأن توجد الصلاة بدون شغل ملك الفيل بل في ملك نفسه يوجد الشغل بدون الصلاة بأن يسكن فيه ولا يصلي

*Bay`* (transactions) at the time of the call (i.e. Adhaan) is an example of something that is *qabeeb li-ghayribi*, in terms of an accompanying factor,
because \textit{bay} in and of itself is a matter that has been legislated (permitted) and which results in possession (of the item). It is haraam at the time of (Adhaan) because to engage in \textit{bay} at the time of Adhaan is to leave off the obligatory rushing to the Jumu`ah, as mentioned in the Aayah:

\{"So hasten to the Dhikr of Allaah and leave off \textit{bay}..."\}

This meaning is from that which accompanies \textit{bay} sometimes, in the case of a person selling and leaving off rushing (to the Jumu`ah), and it is separate from it at other times, such as if he rushes to Jumu`ah and engages in \textit{bay} along the road, such as by both the seller and the buyer both riding on a ship that is heading to the (Masjid). And also, in the case of a person not engaging in \textit{bay} but also not rushing to Jumu`ah, but rather, engaging in some futile activity.

This type of \textit{bay} is like the \textit{bay} done forcefully: it results in possession (of the item) after taking it. Similar to it is having relations with a woman who is in \textit{ba`idh}. It is legislated (permitted to have relations with her) because she is married (to him), but it is \textit{baraam} because of the harm (caused to both him and her), and that is something that is possible to be separate from the intercourse, such as there being intercourse without harm and also harm without there being any intercourse.

Similarly, Salaah performed in a land that was forcefully seized is legislated in itself but is \textit{baraam} because of the fact that it is making use of the possession of someone else, and that is something that is separate from Salaah such as by there being Salaah without using the property of someone else, rather, without using the possession altogether, and there can also be using (the land) without Salaah, such as by him living in it and not performing Salaah.

ولما فرغ عن تقسيم النهي أراد أن يبين أن أيّ نهي يقع على القسم الأول وأيّ نهي يقع على

القسم الآخر فقال:

(والنهي عن الأفعال الحسية يقع على القسم الأول)

والمراد بالأفعال الحسية ما يكون معانيها المعلومة القديمة قبل الشرع باقية على حالها لا تتغير

بالشرع كالقتل والزنا وشرب الخمر بقيت معانيها وماهياتها بعد نزول التحريم على حالها. ولا يراد

أن حرمتها حسية معلومة بالحس لا يتوقف على الشرع. فإن النهي عن هذه الأفعال عند الإطلاق
After the author completed his division of *nabi*, he now intends to make clear what *nabi* falls into the first type and what *nabi* falls into the other type, so he says:

"*Nabi* (prohibition) from *al-Af aal al-Hissiyah* (physical actions) falls into the first type."

The meaning of *al-Af aal al-Hissiyah* are those things which, their meanings were known from old, before the Sharee`ah mentioned anything about it, and they remained upon their states, unchanging through the Sharee`ah, like killing, and *zinaa*, and drinking *khamr* (alcohol). These things remained upon their meanings and their forms after the revelation of the prohibition (of them). They remained upon their (old) condition. The intended meaning (of *al-Af aal al-Hissiyah*) is not that their prohibition is physical, known through the touch or feeling and not dependant on the Sharee`ah, for the prohibition from these types of actions - when used unrestrictedly and when there are no preventative factors - falls into what is *qabeeb li-`aynihi*, unless there is some evidence to the contrary, like intercourse during *haidh* is *baraam li-ghayrihi* (because of something else) despite the fact that it is a physical, sensory action, and this is so because of the evidence.

The author says:

"And the matters of the Sharee`ah fall into that which is connected to it as a description."
This is coupled to his statement regarding al-Af`aal al-Hissiyyah (physical actions, or sensory actions), and what he means is that, the nabi (prohibition) against al-Umoor ash-Shar`iyyah (those matters the meanings of which changed after the Sharee`ah) fall into the category which has evil attached to it as a wasf (description), i.e. it is carried upon (the meaning that) it is qabeeb li-ghayrihi (evil because of something else) as a description.

The meaning of al-Umoor ash-Shar`iyyah are those things which, their meanings changed after the coming of the Sharee`ah, such as fasting, and Salaah, and bay` (business), and ijaarah (leasing). Because, the original meaning of sawm (fasting) is imaak (to hold back). The Sharee`ah added extra meanings to it. The original meaning of Salaah is Du`aa. The Sharee`ah added things to it (i.e. such as qiyam, qira`ah, rukoo`, sujood, etc.) Bay` originally is just an exchange of wealth for wealth. The Sharee`ah added to it things such as both the buyer and seller being fit (to do bay`), and that the item being purchased be present (not absent), etc. Ijaarah (leasing) is the exchange of wealth for benefits. The Sharee`ah added to it that the thing being leased must be known, and the fee being paid must be known, and the time it will be leased for must be known, etc.

The nabi (prohibition) for these actions, when it is unrestricted (i.e. when there are no corroborating evidences or preventative factors), are carried upon the meaning of descriptive evilness, unless there is evidence which points out to it being qabeeb li-`aynibi (evil in and of itself), like the nabi (prohibition) against the bay` of madbaameen (i.e. the foetus inside the pregnant animal) and malaageeb (that which is still in the loins of the animal), and also the (prohibition against) the Salaah of a mubdiith (one who is not in a state of wudoo), because the evilness in it is established necessarily.

The author says:

"So it is not realised in a way that nullifies the necessitated thing, which is the nabi (prohibition)."
This is a proof (the author is giving) for a different claim, and its explanation requires further detail, and that is, there is ikhtilaaf (differences of opinion) with regards to the nabi (prohibition) against al-Af’aal asb-Shar’iyyah (those things which, their prohibition is known from the Sharee’ah).

We (the Ahnaaf) say: "The intended meaning of nabi (prohibition) is the absence of (doing) that action, attached to the choice of the bondsmen.

So if the person abstains from the prohibited thing by his own ikhtiyaar (his own choice and his own volition), he will be rewarded, and if he does not

Imaam ash-Shaafi’ee (rahimahullahi) said: "It necessitates that it is qabeeb li-`aynibi, and that is the complete." This was said as analogy on the first (type), as will be mentioned later on.

We (the Ahnaaf) say: "The intended meaning of nabi (prohibition) is the absence of (doing) that action, attached to the choice of the bondsmen.
(abstain from the prohibited thing), he will be punished. If there was no ikhtiyaar (choice) in the matter, then that kind of staying away (from doing it) will be termed as nafi (negation) and abrogation, not nabi (prohibition).

An example of this is: there is no water in a tankard, and it is said to the person, "Do not drink." This is nafi (negation). On the other hand, if it is said to him in the presence of water, then it will be nabi (prohibition). Thus, what nabi actually is, is the willful absence of doing the action (i.e. despite having the ability do carry out that action, you choose not to do it).

Evilness is necessarily affirmed in nabi (prohibition) because of the Hikmah (Wisdom) of the Prohibiter (i.e. because it is obvious that One Who is All-Wise, if He prohibit something, it's because that thing is evil). So, it is necessary for this evilness to be realised in a manner that does not nullify the necessitated thing, which is the nabi, because when something is qabeel li-`aynib then the nabi changes to nafi (negation, i.e. because something that is qabeel li-`aynib is baatil, and impossible in the sense that it cannot exist according to the Sharee`ah) and the ikhtiyaar (choice) becomes nullified, because the choice (in this context meaning ability) of every thing is that which suits it.

So, the ikhtiyaar (choice or ability) of the sensory or physical actions is the physical ability, i.e. the person is capable of committing zinaa by his ikhtiyaar (choice and ability), but he abstains from it, looking at the nabi (prohibition) of Allaah Ta`ala. The evilness then is li-`aynib. The ikhtiyaar, when it comes to al-Af`aal ash-Shar`iyyah, is that the ikhtiyaar of the action therein must be from the side of the Lawgiver, and with that, He has prohibited from it, so it is permitted and prohibited at the same time, but something cannot be prohibited and permitted at the same time except if that action has been legislated in terms of its origin or basis, and in terms of its being, but evil in terms of its description (i.e. associative factors). When it comes to these al-Af`aal ash-Shar`iyyah, then simply the physical or tangible ikhtiyaar is not sufficient, unlike how it is in the first category (i.e. al-Af`aal al-Hissiyyah).

Imaam ash-Shaafi`ee, when he speaks about the "completion of evilness", i.e. qabeel li-`aynib, then the Shar`i ikhtiyaar leaves and only the tangible or physical ikhtiyaar remains, but that does not benefit us (when it comes to al-Af`aal ash-Shar`iyyah, because physical or tangible ikhtiyaar is not compatible with al-Af`aal ash-Shar`iyyah, because each of two has its own ikhtiyaar that suits it), so then the nabi becomes nafi (negation) and naskh (abrogation), and the necessitator is nullified due to taking into consideration the necessitated, and that is very bad (i.e. nullifying the necessitator because of the necessitated is evil, because then it contradicts its
purpose, because when the necessitated is nullified then so is the necessitator despite it having been established).

Thereafter, he completed his discussion on the rule which he laid down (i.e. that the *nabi* or prohibition against *al-Af’aal ash-Shar’iyyah* is carried upon the meaning of being *qabeeb li-ghayrihi* in terms of description), so he said:

"For this reason, *riba* (interest) and all other *faasid* (corrupt) transactions, and fasting on the Day of Nahr, are *mashbroo* (legislated) in terms of their origin but not legislated in terms of their description (i.e. accompanying factors), because the *nabi* is connected to the *wasm* (description, or accompanying factor) and not the *asl* (the root, or origin). What this means is that, because the *nabi* against *al-Af’aal ash-Shar’iyyah* necessitate that they be *qabeeb li-ghayrihi wasfan* (evil because of something else, a *wasm* (description) which is evil and which is inherent in it), then, these mentioned things are legislated in terms of the *asl* (root) but not the *wasm* (description), because *riba* (interest) is the exchange of wealth for wealth but with an increase which is binding because of the contract, on one of two parties. This is legislated in terms of its being, which is that of the exchange of something for something else, but the *fasaad* (corruption) in it is because of the *wasm* (description), which is the stipulated increase (in *riba*).
This is the same state of the rest of the faasid (corrupt) transactions, like selling with a condition which is not necessitated by the contract and in which there is benefit to one of the two parties (i.e. for the seller, such as the seller selling a slave to a person on condition that the slave still continues working for the seller for a month, or for the buyer, such as the buyer buying a cloth on condition that the seller sews it into a gamees for him) or the item (being sold, such as by placing a condition upon the sold item, for example: selling an item on condition that the buyer does not give it away, or sell it, etc.) which is from the people having a right (i.e. such as if what is being sold is a slave, which is a human being, thus having rights), or selling khamr (alcohol), etc.

All of that is legislated in terms of its being, but the fasaad (corruption) lies in the added stipulation, so after taking it, it results in ownership.

Similarly, fasting on the Day of Nahr is legislated in terms of its being sawm (fasting), but it is not legislated in terms of its description (wasf), which is that of turning away from being (on this day) among the guests of Allaah Ta’ala (i.e. by eating and drinking). Thus, the nabi in all of that is connected to the wasf, not to the asl.

Thereafter, there is a hidden question that is posed at Imaam Abu Haneefah رحمه الله عليه, which is that, selling a free person, or madhaameen (that which is in the loins of the male animals), and the malaaqeeh (that which is within the wombs of the animals), and the nikaab of mabaarim (relatives with whom marriage is baraam), all of this is from al-Af’aal asb-Shar’iyyab, despite the fact
that they do not fall into the category of qabees li-ghayri, but rather, they are qabees li-'aynib according to you (the Ahnaaf). So, the author responds to this by saying:

"The prohibition against the selling of a free person, and the madbaameen, and malaqeeb, and nikaab of maharirn, this (nabi) is a metaphor that refers to nafi (negation)."

So, the free person is general, in that he can either have been born free, or he can be a slave that was freed. Madbaameen is the plural of madhmoonab, and it refers to what is in the loins of the fathers (i.e. the male animals). Malaqeeb is the plural of malqoobab, and it refers to that which is in the wombs of the mothers (i.e. the female animals). Mahaariram is general in that it can the burmat (prohibitedness) can be on account of being a blood relative or on account of being an in-law (i.e. such as a mother-in-law, father-in-law, etc.)

In summary, the nabi for all of these things is carried upon the meaning of nafi (negation) by way of metaphor, so it is a naskb (abrogation, but what the author means here by it is "a negation", or, some say what he means is "a nullification"). because of the absence of its place.

So, the nahi here refers to naskb (abrogation, or nullification) for those legislated things due to the absence of the place of the nahi, because the place of nikaab is the permissible women and these women are haraam, according to nass.

By the author using the term naskb after using the term nafi, it points out to their being near-synonyms (in the usage of the author). However, it is also possible that it can be the technical naskb (abrogation), because there are those who say that the raising of the original permissibility, and the raising of what had been done in jaabiliyyab and of what was in the previous Sharaa’i (plural of Sharee’ah), that is termed naskb (abrogation).
Because the selling of a free person was in the Sharee`ah of Nabi Yusuf عليه السلام, and the bay` of madbaameen and malaaqeeh was in the time of Jaabiliyyah, and the nikaab of some mahaarim was in the time of Jaabiliyyah as well, and some was in the previous religions.

The author says:

"Imaam ash-Shaafi`ee said, in both (cases) it goes to the first category."

He now begins a discussion on explaining the Madh-hab of Imaam ash-Shaafi`ee, i.e. according to him, the nabi in both al-Af`aal al-Hissiyah and in al-Af`aal ash-Shar`iyah goes to qabeeb li-`aynibi, so the hurmat of zinaa and of khamr, and the hurmat of fasting on the Day of Nahr, according to him, are all equal, by his statement: "With the completion of evilness." This is a baal (condition), which gives the meaning of faa`il (the active participle), i.e. in the state of him being the one who says: "with the completion of evil." And that refers to qabeeb li-`aynibi. Or, the word used (gowlan) can be a maf`ool lahu (object), i.e. on account of him saying: "with the completion of evil."

(كما قلنا في الحسن في الأمر)

لأن من مذهبنا أن الأمر المطلق الخالي عن القرينة يقع على الحسن لعينه قولًا بكمال الحسن فلا يكون صوم يوم العيد سبأً للثواب عنده, ولا البيع الفاسد موجباً للملك بعد القبض
The author says:

"Like we (the Ahnaaf) say with regards to basan (goodness) when it comes to amr (command)."

Because, our Madh-hab is that when an amr is unrestricted, free from any evidence to the contrary, then it falls into basan li-`aynihi, (because of the saying) of the completion of basan (goodness). Thus, fasting on the day of `Eid cannot be a cause for reward, according to him, nor can a corrupt transaction (bay`-e-faasid) cause a transfer of ownership after seizure (of the item). He resembled the nabi to the amr, because like how nabi necessitates that the prohibited thing contain evil, similarly amr necessitates that the commanded thing contain goodness." So it is necessary that they both be equal.

The author says:

"Because that which is prohibited from (manhi `anhu) is disobedience, therefore it cannot be legislated (mashroo`) because they are opposites."

This is coupled to his statement: "(due to his) saying 'the completion of evilness." It is not coupled to his saying: "Because the nabi necessitating evilness (in the prohibited thing) is a reality," unlike what the the literal gives the impression of.

وإنما شبه النهى (بالأمر لأن النهى في اقتصاء القيح حقيقة بالأمر في اقتصاء الحسن) فينعي أن يكون على السواء

(ولأن المنهى عنه معصبة فلا يكون مشروعاً لما بينهما من التصاد)

عطف على قولو قولاً بكماؿ القبح لا على قولو: لأف النهى في اقتصاء القيح حقيقة, كما يوهمه الظاهر

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This is coupled to his statement: "(due to his) saying 'the completion of evilness." It is not coupled to his saying: "Because the nabi necessitating evilness (in the prohibited thing) is a reality," unlike what the the literal gives the impression of.
This is a second proof of Imaam ash-Shaafi`ee رحمه الله in terms of its different ranks in rulings and effects, just as the first is a proof in terms of the precedence of what is necessitated by it and its stipulation, and the difference between the two paths is clear, and I explained the answer to both in what was mentioned earlier.

The author says:

"For this reason, he said that hurmat-ul-musaabarah is not established through zinaa."

This is a commencement in a discussion on the views of Imaam ash-Shaafi`ee رحمه الله upon a folded up introduction which stemmed from his saying: "So it cannot be mashroo` (legislated)." i.e. because the prohibited thing (manhi `anhu) is the same whether it is bissi (tangible, i.e. its evilness is known even before being mentioned by the Sharee`ah) or Shar`i (its hurmat is derived from the Sharee`ah), then in and of itself it cannot be mashroo` (legislated), nor can it be a sabab (cause) for a different legislated thing.

Imaam ash-Shaafi`ee رحمه الله said: "Hurmat-ul-Musaabarah is not established through zinaa, because zinaa is baraam and disobedience, so it cannot be a sabab (cause) for receiving a ni`mab which is hurmat-ul-musaabarah, because it puts a strange woman among the mothers (i.e. it makes the
mother-in-law *baraam*, and some of the laws of *hibaab* to be dropped), and Allaah Ta’ala has favoured us with it whence He said:

{"And He it is Who created man from water and established for him kindred by blood and kindred from marriage."
}  

Thus, *burmat-ul-nusaabarab* is not established but through *nikaah*, and there are four types of *burmat*:

1. The *burmat* of the father of the husband upon the wife.
2. The *burmat* of the son of the husband upon the wife.
3. The *burmat* of the mother of the wife upon the husband.
4. The *burmat* of the daughter of the wife upon the husband.

So according to him, these four *burmats* are not established except through permissible intercourse (i.e. *nikaah*).

According to us (the Ahnaaf), it is established through *ziinah* just as it is established through *nikaah*, and it is also established through those things which lead to *ziinah* such as kissing, and touching and looking at the hidden private parts with *shahwah* (desire), and that is because those things lead to *ziinah* and *ziinah* leads to a child.

The child is the original factor that makes the *burmat* become deserving, i.e. it first becomes *baraam* upon the child, the father of the husband, and the son if the child is female, and it is also the mother of the wife and her daughter if the child is male. Thereafter, the *burmat* extends from the child to his two sides (i.e. his parents), so the mother's family becomes *baraam* upon the husband and the husband's family becomes *baraam* upon the wife, because the child has come about as a part and a unity between them.

ولهذا يضاف الولد الواحد إلى الشخصين جميعًا فصار كان الموطودة جزء من الواطي والواطي جزو منها فتكون قبيلته قبيلتهما وقبيلتهما قبيلتهما فعلى هذا كان ينبغي أن لا يجوز وطِي الموطودة مرة أخرى ولكن إنما جاز ذلك دفعاً للحرم
For this reason, the one child is attached to two individuals, so it becomes as though the wife is a part of the husband and the husband is a part of the wife, so his family becomes her family and her family becomes his family, and for this reason, it was appropriate that it is not permissible (for the husband) to have relations with the wife a second time, but this was permitted to ward off difficulty.

Similarly, this (burmat) extends from zinaa to its causes (asbaab), because zinaa and its asbaab (causes, or things which lead to it, such as looking with shahwah, and touching, kissing, etc.) lead to burmat-ul-musaarabah via the medium of the child, not from the fact that it is zinaa, just as how sand purifies abdaath (impurities) because of it taking the place of water (in the absence of water), not from its own part.

(ولا يفيد الغصب الملك)

عطف على قوله: لا تثبت, وتفرض ثاب للشافعي رحمه الله وذلك لأن الغصب حرام ومعصية فلا يكون سبباً لأمر مشروع هو الملك إذا هلك المغصوب وقضي عليه بالضمان

وعدنا يملك المغصوب بعد المضاف، فملكك أكاسبة الباقية في يده وينفذ يبه الماضي لأنه لو لم يملك المغصوب المضاف بل بقي في ملك المالك لاجتمع البديلان في ملكه وهو الأصل مع الضمان وذلك لا يجوز. فلما ملك المالك الضمان يجب أن يملك الغاصب المغصوب فالضمان عنده بقالبة اليد الفائزة عن الملك. وعدنا بمقالة المالك الفائزة إلا في المدير فإنه إذا غصب رجل مدير أحد وهلك في يده بضمته ولا يملكه جرأا ليدره الفائزة

The author says:

"And ghasb (looting or forceful seizure) does not result in ownership."

This is coupled to his statement: "it is not established", and it is a second branching off of Imaam ash-Shaaf`ee, رحمة الله عليه, and that is because ghasb is baraam and disobedience (to Allaah Ta`alaa), so it cannot be a sabab (cause) for something that is masbroo` (legislated), which is ownership (i.e. the ghaasib
or one who looted / seized forcefully coming into possession of the item) if the looted item perishes and he recompenses for it.

According to us (the Ahnaaf), the ghaasib (looter or one who seizes something forcefully) owns the looted item after recompensing (for it), and he owns whatever accrues from it and remains in his hand, and his previous sale is discharged (i.e. if the ghaasib sells the looted item and thereafter recompenses the original owner for it, the sale is complete), because if the ghaasib did not own the looted item, but rather it had remained in the ownership of the original owner, then two substitutes would join in his possession, which is the asl (the original looted item) plus the recompense (given to him by the ghaasib), and that is not permissible.

If the original owner comes into possession of the compensation, then it is necessary that similarly the ghaasib comes into possession of the looted item. The compensation, according to him, is equal to the lost possession of the item (i.e. it is as though the ghaasib has caused the original owner’s hand to lose possession of that item, so the compensation is to make up for that lost possession).

Thus, according to Imaam ash-Shaafiee رحمه الله, the purpose of the compensation is to make up for that lost possession, but it is not equal to the actual looted item itself, and therefore the ghaasib does not own that looted item even after compensating the original owner for it.

According to us, the compensation is equal to the missing possession (i.e. and thus the ghaasib comes into possession of the looted item after recompensing the original owner for it), except in the case of a mudabbar (a slave who is promised manumission, such as by the master saying to him: "When I die, you are free.") If a person forcefully seizes a mudabbar belonging to someone else, and (the mudabbar) perishes while in his control, then he recompenses (the owner for it) and he does not come into of him, and (the recompensing) is to make up for having taken him (the mudabbar) out of the hand (of the owner).
And a journey of evil can never be a cause for (receiving) the rukhsah (concession).

This is a third branching off of Imaam ash-Shaafi`ee رحمه الله عليه, because the journey of evil, which is, for example, a run-away slave taking a journey, and the journey undertaken by a highway robber, and by a baaghi (rebel), etc., is disobedience and haraam, and therefore it cannot act as a sabab (cause) for them receiving that which is masbroo` (legislated), which is the rukhsah (concession) of not fasting (if it is during Ramadhaan) and of making qasr Salaah.

According to us (the Ahnaaf), the rukhsah (concession) is `aam (general) for both the obedient one and the disobedient one, because a journey is not qabeeb fee nafsibi (evil in itself), but rather, the evilness lies in the disobedience that is accompanying it and which is capable of separate from it, and thus it is valid to be a sabab (cause) for receiving the rukhsah (concession).

The author says:

"And a Kaafir cannot own the wealth of a Muslim by way of seizing it."

This is a fourth branching off of Imaam ash-Shaafi`ee رحمه الله عليه. The reason (for him saying this) is that for a Kaafir to seize and come into possession of the wealth of a Muslim in Daar-ul-Harb (a land at war with Islaam) is a matter that is baraam and prohibited, thus it is not capable of being a sabab (cause) for the transfer of ownership (into the hands of the Kaafir).

"And when the concession is reserved for the obedient and the disobedient alike, because a journey is never evil in itself, but rather evil lies in the badness which is accompanying it and which is capable of separate from it, then it is valid to be a sabab (cause) for receiving the concession of not fasting (if it is during Ramadhaan) and of making qasr Salaah.

The author says:

"And a Kaafir cannot own the wealth of a Muslim by way of seizing it."

This is a fourth branching off of Imaam ash-Shaafi`ee رحمه الله عليه. The reason (for him saying this) is that for a Kaafir to seize and come into possession of the wealth of a Muslim in Daar-ul-Harb (a land at war with Islaam) is a matter that is baraam and prohibited, thus it is not capable of being a sabab (cause) for the transfer of ownership (into the hands of the Kaafir).
لِلفُقَرَاءِ الْمُهَاجِرِيْنَ الَّذِيْنَ أُخْرِجُوْا مِنْ دِيَارِهِمْ وَأَمْوَالِهِمْ
لأنهم كانوا مياسير بمكة وإنما سموا فقراء لاستيلاء الكفار على مالهم

According to us (the Ahnaaf), it acts as a sabab (cause) for the transfer of ownership, because protection (of the wealth) takes place with ownership or with the hand (i.e. with control), so when they take (the wealth) and transport it to their land, then the control as well as the ownership is lost from us, so their seizing and coming into possession of it is over something (i.e. the wealth) that is unprotected even though it had been protected initially, so they come into possession of it. That is established from what is pointed out in the Aayah:

"(And there is also a share in the spoils of war) for the poor Muhaajireen who were driven out from their homes and their wealth..."

Because (some of the Muhaajireen) had been wealthy in Makkah, but now (when they came to Madeenah) they were called fuqaraa (poor) because of the Kuffaar having seized and taken control of their wealth (which was left behind in Makkah).

End of Volume I.