

and duties, as [he did] with Mâlik b. Nuwayrah, Zubruqân b. Badr, Zayd b. Hârithah, 'Amr b. al-'Aṣ, 'Amr b. Ḥazm, Usâma b. Zayd, 'Abd al-Raḥmân b. 'Awf, Abû 'Ubaydah b. al-Jarrâh, and others whose mention would be lengthy.

Moreover, the specialists of *sîra* have unanimously established that he used to enjoin the people of the outer regions to accept the statements of his envoys, mediators, and governors. If he would have needed to send with every envoy the required number for *tawâtur*, not even all of his Companions would be sufficient for this, and his *Dâr al-Hijra* [i.e. Medîna] would have become empty of his Companions and supporters. Consequently, his enemies from among the Jews and others would have overpowered him, and the order and management of affairs would have been upset. This is clearly absurd imagination.

If it is said: He, *صلى الله عليه وسلم*, had verbally and through *mutawâtir* reports informed them [the outer regions] of the details of *zakât* and only sent the collectors to collect it.

We shall say: Why is it necessary for them to believe their claim of collection while they are [only] individuals? Moreover, his dispatches, *صلى الله عليه وسلم*, were not only for collection of *zakât*, but also for teaching them religion, arbitrating between disputants, and explaining the duties of the *Shari'a*.

If it is said: Then it must be necessary for them to accept the essentials of prayer and *zakât*, as well as the essentials of the mission, the message, and the miracle [of the Prophet].

We shall say: As for the essentials of *zakât* and prayer, it is incumbent to accept them because the [envoys] were dispatched to explain the duties of the *Sharî'a* after the promulgation of the essentials of the mission, while it is not [incumbent] with regard to the essentials of the message, faith, and the miracles of his Prophethood. For how could an envoy of the Messenger of Allâh, *ﷺ*, say, "He has made it obligatory upon you to believe me," while they were not familiar with his messengership. But after believing in him, it becomes possible for them to give heed to the envoys conveying his command and to listen to them.

If it is said: Accepting a solitary report is necessary only if there is a decisive proof indicating the obligatoriness of acting on its basis, such as *Ijmâ'* and *tawâtur* indicate proof according to you. But on what basis would those [people] believe the governors if they said, "It is obligatory for you to act according to our statement?"

We shall say: It has been reported to them by way of *tawâtur* from the *sîra* of the Messenger of Allâh, *ﷺ*, /1:152/ that he dispatched governors and envoys individually, like other dignitaries and leaders. But were it not for their knowledge of this, it would have been possible for any doubter to dispute this if doubt occurred. But with circumstantial evidence, doubt rarely arises about this. For if someone comes to our land with a decree of his appointment as judge, no doubt contends with us about his truthfulness, even though it has not come to us through *tawâtur*, but through circumstantial evidence, namely awareness of the

scribe's writing, the unlikelihood of his boldness to lie while being exposed to danger, and so on.

The third proof is that a common person, according to consensus, is ordered to follow a *muftî* and believe him, although he [the *muftî*] may relate to him his conjecture. Therefore, a person who reports based on a revealed authority, which he does not doubt, is more deserving of assent. But lying and error are possible on the part of both the *muftî* and the reporter. Indeed, a mistake on the part of a reporter is less likely because every *mujtahid*, even when he is correct, is so only if he has not fallen short of completing his examination. But it may be that he thinks that he did not fall short of completing it, while he did. This<sup>49</sup> is more acceptable on the part of, say, whoever permits adherence to a follower of al-Shâfi'î, رَحْمَةُ اللهِ عَلَيْهِ, when he reports from his *madhhab*; for if he transmits the opinion of others, why should he not report [his own *madhhab*'s] statements?

If it is said: This *qiyâs* yields only conjecture. But it is *not* permissible to establish principles on the basis of conjecture and *qiyâs*, while acting on the basis of a solitary report is a principle. How could this not be so, while the tendency of conjecture is not to enlighten? Yet a *mujtahid* is one to whom recourse is necessary. Thus, if a common man is obliged to obtain *ijtihâd*, it would become impossible, accordingly. Hence, he is compelled to follow the *muftî*.

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<sup>49</sup>This refers to the beginning of paragraph.

We shall say: There is no necessity for this. Rather one should have recourse to the *al-barâ'a al-aṣliyya* [original state of freedom] if there is no way for him to have knowledge, just as, according to you, it becomes necessary for the *mufti*—when *tawâtur* becomes impossible and a solitary report is related to him—to reject it and refer to *al-barâ'a al-aṣliyya*. Furthermore, we say that this is not conjectural *qiyâs*. Rather, it is decisively proven to be of similar meaning. For if it is valid to act on the basis of a solitary report in matters of marriage, then we should regard it as decisive in sales transactions. Variation in what is reported makes no difference. So here there is no difference except with the source of the report. For the *muftî* reports on the basis of his conjecture, while the transmitter reports the statement of someone else—just as there is no discrimination with two witnesses as to whether they report about themselves or others, as to the integrity of others or their own conjecture about others' trustworthiness.

The fourth proof is His statement, *قوله*:

*... If a ṭa'ifah [contingent] from every expedition remained behind, devoting themselves to acquiring deeper knowledge of religion and admonishing their people when they return to them . . . .*<sup>50</sup>

A '*ṭa'ifah*' is a small number of people, say three, and certain knowledge does not accrue with their statement. But this is subject to examination; for if it is decisive, then it is so in relation to the

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<sup>50</sup>Qur'ân, 9:122.

mandatoriness of admonition, but not in relation to the mandatoriness of action on the part of the admonisher, since he is included in the admonition. Similarly, it is necessary for a lone witness to establish testimony, not to act upon it alone, until it is corroborated by other [evidence]. This objection is the one that weakens [their argument], as does holding to His statement, **خُذُوا**, "... And those who conceal what We have sent down from the clear signs and guidance . . .,"<sup>51</sup> and his saying, **حَسْبِيَ اللَّهُ عَلَيْهِ تَوَكَّلْتُ وَإِلَيْهِ أُنِيبُ**, "May Allâh make prosperous he who heard my speech, retains it, and then delivers it as he has heard it. . . ." /1:153/ and others.

Know that the opponent in this issue has two doubts:

The first is their statement that the establishment of solitary reports has no basis save *Ijmâ'*. But how can this be claimed, while there were none from among the Companions but he [at times] rejected solitary reports? The following are examples of this:

The Messenger of Allâh, **صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ**, hesitated to accept the report of Dhû al-Yadayn that he [the Prophet] had made *salâm* [indicating the end of prayer] after just two [*rak'as*], until he asked Abû Bakr and 'Umar, **رَضِيَ اللَّهُ عَنْهُمَا**, and they confirmed what he said. Then he [the Prophet] performed the prostration of forgetfulness;

Abû Bakr, **رَضِيَ اللَّهُ عَنْهُ**, rejected [the report of] al-Mughîrah b. Shu'ba, concerning a grandmother's<sup>52</sup> share of inheritance until

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<sup>51</sup>Qur'ân, 2:159.

<sup>52</sup>In the two available editions, the text reads as "grandfather," which is a misprint according to the sources citing the *ḥadîth*. See Wensinck, *Concordance et Indices de la Tradition*

Muḥammad b. Maslimah reported to him in collaboration with al-Mughîrah;

Abû Bakr and 'Umar rejected 'Uthmân's report, رُخِيَوا عَنْهُ، when he related that he sought permission to return al-Hakam b. Abî al-'As. They asked him for someone to testify on this with him;

Also it has been widely reported that 'Umar, رُخِيَوا عَنْهُ، rejected Abû Mûsa al-Ash'ârî's report about permission [to leave one's door] until Abû Sa'id al-Khudrî, رُخِيَوا عَنْهُ، testified for him;

'Alî, رُخِيَوا عَنْهُ، [rejected] Abû Sinân al-Ashjâ'î's report concerning the story of Burû' bint Wâshaq. Moreover, it has been established about ['Alî] that he used to ask for an oath upon the reporting [to him] of a *ḥadîth*;

'A'isha, رُخِيَوا عَنْهَا، rejected 'Abd Allâh b. 'Umar's report regarding punishment [in the grave] for a deceased person on account of one's relatives' bewailing;

Also, it is known that 'Umar prohibited Abû Mûsa and Abû Hurayra from reporting from the *ḥadîth* of the Messenger of Allâh, رُخِيَوا عَنْهُمَا؛

And other such [examples] abound.

Most of these reports indicate the opinions of those who require a certain number of reporters and not the opinion of those who require *tawâtur*, for they never assembled nor, therefore, waited for *tawâtur* to occur.

But we shall say, in reply to what they have asked about, that

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*Musulmane* , 2:443-44; and al-Zahîlî, *al-Fiqh al-Islâmî wa Adillatuhu*, 8:297-308.

what we have reported is decisive concerning their [the Companion's] practice. Moreover, what you have mentioned is refutation on the basis of non-essential causes which do not indicate the falsity of the principle— just as their rejection of some of the texts of the Qur'ân, their abandonment of some forms of *qiyâs*, and a judge's rejection of certain testimonies do not indicate the falsity of the [corresponding] principle.

Let us point out various alternative interpretations:

As for the hesitation of the Messenger of Allâh, ﷺ, with Dhû al-Yadayn, this is liable to three interpretations:

The first is that he [the Prophet] may have considered [this to be] illusion on his [Dhu al-Yadayn's] part because of the large number of the congregation and the unlikelihood of him alone being aware of it while all the rest were heedless. Error on his part was more likely than heedlessness on the part of the large congregation. Once the signs of illusion appear then suspension of judgment becomes necessary.

The second is that even if he knew of his truthfulness, it is possible that the reason of suspension of judgment was to teach them the necessity of suspension in similar cases. If he did not suspend [judgment], then affirming by way of the silence of the group would become an established *Sunna*, so he cut this possibility.

The third is that Dhû al-Yadayn made a statement that if known to be true its effect would have become evident and they would concern themselves with it. So, it is associated with testimony. Therefore, he did not accept the statement of just one

person regarding it.

The strongest [of the interpretations] is what we have mentioned above. Certainly, if one who requires the [legal] number of testimony holds to this, then it is necessary for him to require three. Furthermore, it is necessary that they must be among a large congregation, where the remaining /1:154/ keep silent, for this is the way it was.

As for Abû Bakr's hesitation concerning the *ḥadīth* of al-Mughīrah, رَضِيَ اللهُ عَنْهُ, on the share of inheritance of the grandmother, perhaps there was a reason necessitating hesitation. It may have been that no one else was aware of it; or it may have been for [Abû Bakr] to see whether it was an established or abrogated rule, or to know whether others had a report similar to his [al-Mughīrah] so that the rule would be stronger, or, if contrary, removed; or perhaps he hesitated while waiting for additional support, just as a judge seeks corroborative support after the testimony of the two witnesses—not for the purpose of rejecting their testimony—but in order to pass judgement if he does not find additional support; or Abû Bakr may have demonstrated hesitation so that haste in reporting carelessly would not occur often.

It is necessary to understand [his hesitation] in accordance with this. For it has been confirmed about him [Abû Bakr] decisively that he accepted solitary reports and withheld denial against those who held them.

As for the rejection of 'Uthmân's *ḥadīth* concerning al-Hakam b. Abû al-'As, it may have been due to its being a report that established a right for a [specific] person. Thus, like a testimony, it



is not established by the statement of one person. Or [perhaps] he hesitated because of 'Uthmân's kinship with al-Hakam, since he was known for his attachment to his relatives. Thus, he [Abû Bakr] hesitated in order to exonerate his ['Uthmân's] honor and status, so that a stubborn and obstinate person would not hold that he said this because of his kinship—and this has been established by the statements of others. Or it may be that they hesitated in order to establish for people the practice of restraint concerning the right of a friendly near relative so that verification in similar cases would be learned.

As for the report of Abû Mûsa seeking permission, he was in need of it in order to repeal himself from 'Umar's practice. For he left 'Umar's door after knocking three times, as though he were above waiting at his door. He ['Umar] feared, then, that this would become a precedent for others, that is, to report *ḥadīth* for personal purposes. The proof of this is that when Abû Mûsa returned with Abû Sa'īd al-Khudrī who testified on his behalf, 'Umar said, "It was not because I suspected you, but I was afraid that people would relate fabrications to the Messenger of Allāh, ﷺ." It is permissible for the political authority to hesitate even without suspicion in similar cases. Why should it not be so! while similar reports cannot be equal in their prominence and in their rectitude to our [cited] *ḥadīths*' reporting their acceptance [of solitary reports].

As for 'Alī's rejection of al-Ashja'i, he has already mentioned his reason in saying, "How can we accept the statement of a bedouin who urinates on his heels," demonstrating that 'Alī did not

know his trustworthiness and exactitude. This is why he attributed to him crudeness and abandonment of cleanliness after urinating.

This is similar to what 'Umar said about Faṭīma b. Qays regarding the *ḥadīth* on residence:

We cannot abandon the Book of our Lord and the *Sunna* of our Prophet for a statement of a woman whom we do not know whether she is telling the truth or lying.

These, then, are ways through which hesitation may be accounted for with reference to the reports.

The Second Doubt. They hold to His statements, *قُلُوبِي* :

*. . . And do not concern yourself with anything which you have no knowledge of*<sup>53</sup>

*. . . Saying to Allāh which you have no knowledge of*<sup>54</sup>

*. . . And we can bear witness to more than has come known to us*<sup>55</sup>

*. . . If a fāsiq comes to you with any news, ascertain the truth lest you harm a people in ignorance*<sup>56</sup>

claiming that ignorance occurs in the statements of trustworthy

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<sup>53</sup>Qur'ān, 17:36.

<sup>54</sup> Qur'ān, 7:33, where this quotation comes as part of a list of forbidden things.

<sup>55</sup>Qur'ān, 12:81.

<sup>56</sup>Qur'ān, 49:6.

witnesses.

This is a false argument on several grounds:

First, their denial of the assertion of solitary reports is not known through any decisive proof. In fact, it is liable to error. Therefore, it is a judgment without certain knowledge.

Second, the mandatoriness of acting on their bases is known through the decisive proof of *Ijmâ'*. Therefore, there is no ignorance in it.

Third, what is intended from these verses is the prevention of the witness from decisively testifying on that which he did not see or hear, or giving *fatwâ* on the basis of what he did not report or on the basis of what has not been transmitted by trustworthy persons.

Fourth, if this were to constitute a rejection of the solitary report then a rejection of the testimony of two, four, a man and two women, judgment based on an oath, and so on could also adduced. Just as the mandatoriness of judging based on these matters has been known decisively in the Qur'ân, even though lying is possible, it is the same case with reports.

Fifth, the prohibition of installing Caliphs and judges is necessary because we are not certain of their faith, let alone their piousness. Nor do we know certainly the purity from *janâba*<sup>57</sup> or

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<sup>57</sup>This term signifies a person who has the obligation of performing a total ablution (*ghusl*) because of sexual intercourse or seminal discharge. For details of its rules and conditions, see al-Zahili, *al-Fiqh al-Islâmî wa Adillatuhu*, 1:311, 58, 62; for praying behind an *imâm* in relation to *janâba*, see 2:177, 79, 99.

*hadath*<sup>58</sup> of a prayer's *imâm*. Thus no one must follow them.

## *Chapter Two: The Conditions of the Transmitter and His Character*

Now, if the necessity to act according to a solitary report is established, then know that not all reports are acceptable. First, however, understand that by *acceptance* we do not mean affirmation, nor by *rejection* do we mean denial. Rather, it is incumbent upon us to accept the statement of a trustworthy reporter though he may lie or err, while it is not permissible to accept the statement of a *fâsiq* though he may tell the truth. Rather, by *accepted* we mean that necessitates action, and by *rejection* we mean that which we bear no responsibility to act according to.

What is acceptable is the transmission of every locus of obligation who is trustworthy, a Muslim, and accurate, whether he is transmitting alone or with others. So these are five points which we must examine.

First, the transmission of an *individual* is accepted even though his testimony is not acceptable.<sup>59</sup> This is contrary to al-Jubbâ'î and others who require a specific count, not accepting less than the statements of two men; and then, the transmission of

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<sup>58</sup>This refers to the state of annulling legal purity, thus preventing one from performing prayer. For details see Zahîlî, *al-Fiqh al-Islâmî wa Adillatuhu*, 1:284, 94, and 2:17.

<sup>59</sup>Ghazâlî, *al-Mankhûl*, p. 255.

neither one is acceptable unless each transmits it from another two men [and so on]—until it reaches our times, when it would be transmitted by a great number, to the degree it would not be possible to establish any *ḥadīth* at all.

Some people say that not less than four is necessary, as taken from the [number] of witnesses for adultery. But as a proof of the falsity of their position, we shall say that if accepting the statements of individuals is established, even though it does not yield certain knowledge, then setting conditions is dogmatism and cannot be known accept on the basis of a text, or *qiyās* based on a text, though there is no way to claim a text.

As for what has been transmitted from the Companions seeking corroboration, this relates to two or three incidents, for reasons we have mentioned. But as for what they have decided on, based on the statements of 'A'isha alone, or the wives of the Messenger of Allāh, *صلى الله عليه وسلم*, or 'Abd al-Rahmān b. 'Awf, or Abū Hurayra, and others, it is beyond encompassment. Thus, we know decisively from their conditions that they accepted solitary report, just as we also decisively know the rejection of a [lone] individual's testimony.

If they rely on analogy to testimony—which is a false analogy, for it is known that there is a distinction based on their practice—then why should analogy not be applied on requiring freedom, maleness, and four [witnesses] as in reporting fornication; or with regard to sighting the crescent, or the testimony of a midwife, which are the same. Abiding by this is a violation of *ijmā'*. There should be no distinction if 1:156/ *qiyās* is necessarily

applied.

The second condition—which is actually the first, for count, according to us, is not a condition—is responsibility. Thus, the transmission of a minor is not accepted, because he does not fear Allâh, ﷻ, and has no deterrent from lying. Therefore, relying on his statement is not established. In accepting testimony, they have relied also on inspired peace of mind<sup>60</sup> and the accrual of *zan*. A *fâsiq* is more reliable than a minor because he is fearful of Allâh, ﷻ, and has a deterrent in his religion and reason, while a minor does not fear Allâh, ﷻ, at all. Therefore, he is rejected, *a fortiori*.

It is more appropriate to hold this than to posit the rejection of his admission. Certainly, if his statement regarding what he reports about himself is not accepted, then not accepting what he reports about others is more appropriate. For this can be refuted by the case of a slave whose admission is not accepted while his report is.<sup>61</sup> And certainly if the reason is that it encompasses the authority of a master and is withheld from him [the slave], then the authority of a child is also withheld from him in his [own] interest. Therefore, concerning what is not related to him, his statement may have an effect, as well as his condition, to the extent that it is permissible to follow him [in prayer] based on his statement that

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<sup>60</sup>Ghazâlî repeatedly uses the term *sukûn al-nafs*, meaning relying or trusting upon the validity or truth of something based on inner tranquility or an ease or peace of mind. For the linguistic meaning

<sup>61</sup>For the status of the slave's testimony and admission, see Zahîlî, *al-Fiqh al-Islâmî wa Adillatah*, 6:563 and 6:16, respectively.

he is ritually pure and does not pray unless he is so. In so doing, it is like following the righteous or the unrighteous, and so it is with a minor and an adult.

The testimony of a *fâsiq* is not accepted, and the minor is bolder than him in lying. But if the minor was capable of discernment when he received the report, and of age when he delivered it, then it is acceptable, for there is no flaw in his reception nor in his delivery. A proof for accepting his [the minor's] report is the consensus of the Companions to accept the reports of Ibn 'Abbâs, b. Zubayr, Nu'mân b. Bashîr, and others from among the minors of the Companions, without distinction between what they have heard before or after coming of age. For this reason, they were accustomed to bringing children into their sessions. Based on this, the earlier and later generations proceeded to bring minors to reporting sessions and accepted their testimony with regard to what they have received while juveniles.

If it is said: Some scholars have stated that the testimony of minors is accepted when concerning mischief that occurs between them.

We shall say: Their adduction is based on circumstantial evidences if they [minors] are numerous and they report before dispersing. But if they disperse, they become liable to false instruction and have no deterrent. So, whoever rules based on this does so only because of the frequency of mischief between them and the great need of knowing by way of circumstantial evidences. Therefore, this does not parallel testimony.

The third condition is that he should be accurate. So, whoever at the time of receiving [a report] was not capable of discernment, or was inattentive, or does not properly retain what he has received, delivering it in the same form, there should be no reliance on his statement, even if he was not a *fâsiq*.

The fourth condition is that he be Muslim, for there is no dispute that the report of an unbeliever is not accepted because he is suspected with respect to religion, even though their testimonies about one another are accepted according to Abû Hanîfa, who does not dispute rejecting their reports. Reliance in rejecting it is based on the *ijmâ'* resolved to deprive him of this capacity in religion, even if he is trustworthy in his own religion. This is more appropriate than our statement that a *fâsiq's* testimony is rejected, for unbelief is the greatest form of *fisq*. /1:157/ And Allâh, ﷻ, has said, "... *If a fâsiq comes to you with any news, ascertain [the truth] lest you harm a people in ignorance . . .*"<sup>62</sup> This is because a *fâsiq* is suspected for his boldness in disobeying, while the fearful unbeliever may not be suspected. Still, reliance is on *ijmâ'* concerning depriving the unbeliever from this status.

If it is said: This is in reference to the Jews, Christians, and those who do not believe in our religion—since it is not suitable policy for them to exercise authority in a religion in which they do not recognize its reverence. But what do you say concerning *al-kâfir muta'awwil*, who holds grave innovation, such that it

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<sup>62</sup>Qur'ân, 49:6.



necessitates charging him with unbelief on its basis, although he reveres religion and refrains from disobedience while not knowing he is an unbeliever. Why should not his report be accepted? Indeed, al-Shâfi'î accepted the report of some of the grave innovators, even though they were *fâsiqs* because of their innovation, for they were *fâsiqs* because of their misinterpretation.

We shall say: With regard to the report of the grave innovator, who is a *muta'awwil*, a discussion will follow.

As for the unbeliever, even though he is a *muta'awwil*, his report is not accepted, since all unbelievers are *muta'awwil*. Thus, a Jew also does not know that he is an unbeliever. As for he who is not a *muta'awwil*, but is obstinate by tongue after knowing the truth in his heart, such cases are rare. The piety of a *muta'awwil*, such that he does not tell a lie, is like the piety of a Christian, which should be disregarded. Rather, his status is acquired only on the basis of Islam. This is known through *ijmâ'*, not through *qiyâs*.

The fifth condition is trustworthiness.<sup>63</sup> Allâh, ﷻ, has said, "... If a *fâsiq* comes to you with any news, ascertain [the truth] lest you harm a people in ignorance . . . ."<sup>64</sup> This forbids against relying on the statement of a *fâsiq*, and it is a proof for requiring trustworthiness in transmission and testimony.

Trustworthiness expresses uprightness in conduct and in

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<sup>63</sup>Trustworthiness (*'adâla*) is the quality of religious piety and personal morality which lends legal credibility to a reporter or a witness.

<sup>64</sup>*Qur'ân*, 49:6.

religion and is reducible to a stable disposition of the heart that enforces consistency of both righteousness and virtuousness so that trust of the people in one's truthfulness accrues. For there is no trust in the statement of a person who does not fear Allâh, ﷻ, in such a manner that deters him from lying. Furthermore, there is no dispute concerning the fact that impeccability from all sins is not required. Yet neither is it sufficient to avoid major sins. Rather, some minor ones void [trustworthiness], like stealing an onion, the deliberate undermeasuring of grain, and, in general, all that indicates the lowliness of one's religion, to the extent of being bold in lying for worldly gains.

Why should this not be so! while it is required for trustworthiness that one refrain from some permissibles that injure one's credibility or virtuousness, such as eating en route, urinating in the streets, accompanying the wicked, and jesting excessively. The governing criterion in this, outside of the locus of *ijmâ'*, is that it must refer to the *ijtihâd* of a judge. So that which indicates to him his boldness in lying, is the basis for his [the judge] rejection of the testimony, and what does not is not.

Now this differs with respect to various *mujtahids*; but detailing this belongs to *fiqh* and not to *uṣūl*. There may be a person who is accustomed to backbiting and the judge is aware of this being his habit which he cannot refrain from. But if he was forced to testify falsely he would not testify at all. Therefore, accepting his testimony based on *ijtihâd* is permissible in this case; and this differs in the customs of various lands. Also, the position of various people differ in regard to the gravity of some minor

[sins] versus others.

**I. DISCUSSION:** Some people of Iraq say that trustworthiness expresses only the manifesting of Islam and staying free from any open *fisq*. So every unacknowledged Muslim, according to them, is trustworthy. But according to us, his trustworthiness /1:158/ is not acknowledged except through familiarity with his inner character and exploring his public and private conduct. Indications of the falsity of their position are as follows.

First, a *fâsiq's* testimony and transmission are rejected based on the text of the Qur'ân and on our knowledge that the proof of accepting solitary report is its acceptance by the Companions and their *ijmâ'*; for this has not been reported from them save in the case of the trustworthy. But, if a *fâsiq's* transmission is accepted it should be through proof of *ijmâ'* or his analogy to the trustworthy person, who is accepted by all. Yet there is no consensus on a *fâsiq*; nor does he resemble a trustworthy person concerning the accrual of trust in his statements. Therefore, *fisq* hinders transmission, like childhood, unbelief, and slavery with regard to testimony. The status of an unacknowledged person regarding these characters is that his statement cannot be accepted.

Similar to this is the status of an unacknowledged person with regard to *fisq*, for if he is a *fâsiq* his transmission is rejected; and if he is trustworthy, he is also not accepted because of unfamiliarity with him, exactly as we would be in doubt about his being a child, slave, or unbeliever—there is no difference.

Second, the testimony of the unacknowledged is not accepted. Neither is his transmission. Even though they disallow his testimony with regard to possessions, they indeed assent to testimony with regard to penalties. Again, the unacknowledged is rejected with regard to penalties. The manner of trust concerning transmission and testimony is one, even though they differ in the rest of the conditions.

Third, for the unfamiliar *muftî* —whom it is not known whether he has reached the rank of *ijtihâd* or not—it is not permissible for the common person to accept his statement, and such is the case if one does not know whether he is a scholar or not. Rather, they assented to the fact that if neither his trustworthiness nor his *fisq* is known, he is not accepted. What is the difference then between the reporting of the *muftî* on his own *ijtihâd* and him relating a report from others?

Fourth, the testimony of a secondary [witness] should not be heard as long as he does not identify the primary, who cannot be unacknowledged by the judge. Accordingly, it would not be necessary to specify and identify him if the statement of the unacknowledged were acceptable. This also answers those who accept the testimony of the unacknowledged, which cannot be contested.

If it is said: It is incumbent for him to mention the primary [witness] so the judge may recognize his [the unacknowledged's] *fisq* and therefore reject his [the primary's] testimony.

We shall say: If the definition of trustworthiness is his Islam

without manifestations of *fisq*, then this [condition] has been established. Therefore, it is not necessary to investigate until *fisq* is manifested, which voids what he has mentioned by way of *mursal* [unconnected] report, for they did not make it necessary to identify the *shaykh* [the source], while it may be that the transmitter knows his *fisq*.

Fifth, our reliance on solitary reports is from the practice of the Companions, but they have rejected the report of the unacknowledged. So 'Umar, رَضِيَ اللهُ عَنْهُ, rejected the report of Fâtima b. Qays saying, "How could we accept a statement of a woman whom we do not know whether she is telling the truth or lying." And 'Alî rejected al-Ashja'i's report on *al-Mufawwida*<sup>65</sup> and he put reporters to oath, while putting to oath only those whose trustworthiness, not *fisq*, was outwardly known. Also, any of them [the Companions] who rejected the statement of the unacknowledged, was not rejected by others. So, they were either those who objected or those who remained silent. In this way, their consensus regarding the acceptance of the trustworthy is evident, since they were either those who accepted or those who kept silent, not denying nor objecting.

The sixth is what has been evident in the case of the Messenger of Allâh, صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ, pursuing trustworthiness, chasteness, and genuine piety in those he dispatched on

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<sup>65</sup>This refers to a woman authorizing her husband to determine her dowery. See Qal'ajî, *Mu'jam Lughat al-Fuqahâ*, p. 448.

assignments /1:159/ or for the delivery of the message. He only pursued the most pious because he charged them not to accept save the statement of the trustworthy. These are strong proofs within the domain of *ijtihâd*, which is close to being decisive. But the question is subject to *ijtihâd* and is not decisive.

### Suspensions of the Opponents

There are four:

First, [they say] he, *حَدَّثَنَا ابْنُ عَبَّاسٍ وَاسْمُهُ*, accepted the testimony of the bedouin alone regarding the sighting of the crescent though all he knew of him was his being a Muslim.

We shall say: As for him being a bedouin, it does not disallow him from being acknowledged as trustworthy to the Prophet through revelation, experience, or attestations of his trustworthiness from those who knew his status or character. So, who grants you that he was unacknowledged to him [the Prophet]?

Second, [they say] the Companions accepted the statements of slaves, women, and bedouins because they did not know them to be *fâsiqs*, but knew them to be Muslims.

We shall say: They have accepted the statements of the wives of the Messenger of Allâh, *حَدَّثَنَا ابْنُ عَبَّاسٍ وَاسْمُهُ*, and the wives of his Companions, while their trustworthiness, as well as that of their clients, were well known to them. But when they did not know [the the person], they rejected [them], as in the statement of al-Ashja'î and that of Fâtima b. Qays.

Third, they say, "Regarding an unbeliever who becomes a Muslim and then immediately testifies or transmits, if you say you

do not accept his testimony, this is inconsistent. But if you accept, there is no base for acceptance but him being a Muslim and not knowing *fisq* from him. When a period passes wherein we do not know of any *fisq* from him throughout the duration of him being a Muslim, then we do not hold the necessity of rejecting him."

We shall say: We do not concede accepting his transmission because a liar may become a Muslim and maintain his habit. For if we do not become aware of fear in his heart and a deterrent from lying, we do not accept his testimony. Piety is in the heart and based on fear [of Allâh]; but it is indicated through his actions and his comings and goings. If we concede accepting his transmission, it would be because of the occurrence of his Islam and his newness to the religion. But, there is a sizable difference between he who is starting and is fresh and he whose heart is hardened by a long intimacy [with lying].

If it is said: Since trustworthiness is reducible to an inner disposition of the soul whose basis is fear [of Allâh], this is not observable. Rather, it is inferred from evidence which does not yield certain knowledge but preponderates over conjecture [*zan*]. Then the basis of this fear is faith, which is a clear indication of fear. Therefore, we should be satisfied with it.

We shall say: It does not indicate this because observation and experience indicate that the number of *fâsiqs* among believers outnumber the trustworthy. So, how could we doubt ourselves regarding what we have known with certainty? Furthermore, is this not sufficient with regard to testimony for punitive measures

[*'uqûbât*], the testimony a first hand [witness], the status of the *muftî's* credibility, and the rest of what they have conceded to.

Fourth is their saying that the statement of a Muslim who is unacknowledged is acceptable as to whether meat is properly slaughtered, bathwater is pure, a woman for sale is an unmarried slave or in her *'idda*<sup>66</sup> so that intercourse is permissible according to his statement, or one's state of purity for prayer from major or minor *janâba* and *ḥadath*<sup>67</sup> were he to lead. And such is the case with the statement of one who reports on the purity or impurity of water based on his manifestation of Islam; or the statement of one who informs /1:160/ the blind of the direction of the prayer.

We shall say: As for the [unacknowledged] contractor, his statement is acceptable, not due to his being unacknowledged, but given the prevalence of *fisq*, this is a concession, since *fâsiqs* are so numerous and are urgently needed for transactions. This is [allowed] also for the permissibility of following [in prayer] the righteous and the unrighteous. So *sitr*<sup>68</sup> is not required.

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<sup>66</sup>This refers to the waiting period of a woman after the death of her husband, which is four months and ten days; or divorce, which last through three menstrual periods. See Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 439.

<sup>67</sup>*Ḥadath* is ritual impurity; consult Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 176.

<sup>68</sup>*Sitr* linguistically means *veil* or *cover* in the technical vocabulary of the *muḥaddiths*. It refers to a person who is not known as being discredited. Consult Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 176.



As for the reports about the direction of prayer and the purity of water, it is not necessary to accept these reports if peace of mind does not accrue—and peace of mind will not accrue with regard to the unacknowledged. In fact, peace of mind accrues regarding the statement of a *fâsiq* who is known to refrain from lying more so than by the statement of the unacknowledged. But in matters which concern a person's relationship with Allâh, ﷻ, it is not uncommon for them to be reduced to one's peace of mind.

As for transmission [of *ḥadīth*] and testimony, their status is much higher and their importance is extensive. Therefore, they cannot be compared with other cases [simply] because they are plausible forms and are subject to *ijtihād*. As for the rejection of *ḥadīths* from a *fâsiq* and the unacknowledged, this is nearly decisive.

**II. DISCUSSION:** Now, they have differed concerning the testimony of the *muta'awwil fâsiq* who does not recognize his own *fisq*. Al-Shâfi'î said:

I accept the testimony of a Hanafite, although I penalize him for drinking *nabîdh*, for this is undecisive *fisq*. Rather, the decisive sort is the *fisq* of the Kharajites, who pillage the lands and kill children while not recognizing that they [themselves] are *fâsiqs*.

Al-Shâfi'î also said that the testimony of the heretics is accepted, with the exception of the Khattabiyya from among the Shi'ites because they hold the opinion of testifying falsely on behalf of their sectarian allies.

Al-Qâdi opined that the transmission and testimony of the heretics should not be accepted, for they are *fâsiqs* by their actions and their ignorance of the prohibition of their acts. So their *fisq* is doubled. He asserts that a heretic's ignorance of his own *fisq* is like his being ignorant of his own unbelief or his own enslavement.

Dispute arises from [the question] of whether *fisq* disqualifies testimony for its non-status, as does unbelief and slavery, which negates the capacity [of credibility], or negates one's statement due to suspicion. But if it is [a matter] of suspicion and the heretic refrains from lying, he should not be suspected. In fact, al-Shâfi'i's statement refers to this. This falls, however, within the domain of *ijtihâd*.

So, Abû Hanîfa's position is that unbelief and *fisq* cannot negate capacity, but necessitate suspicion. Therefore, he accepted the testimony of the *dhimmîs* against one another, while al-Qâdi's position is that both of them lack the status, therefore negating capacity. But, al-Shâfi'i's position is that unbelief lacks [status], while *fisq* necessitates rejection because of suspicion. This is the preponderating opinion in our view.

If it is said: Al-Shâfi'i's position is disputatious in two ways:

First, he declared that marriage cannot be contracted based on the witness of a *fâsiq* due to lack of capacity. Second, even if there is suspicion but one's truthfulness preponderates in the thinking of the judge, he should accept it.

We shall say: As for the first, it is based on his statement, *عن أبيه قال لا نكاح إلا بولي أو نسكح*, "There is no marriage save with a guardian and two

trustworthy witnesses.” But it is only for the *Sharî'a* to add requirements to the capacity of witnessing, like the requirement concerning the guardian, or the requirement of an additional number [of witnesses] concerning fornication.

As for the second, this is caused by differing opinions, since [trustworthiness] is an inner quality that the *Sharî'a* has linked to evident means, namely, a specific number and a special character, i.e., trustworthiness. So, it is necessary to follow the evident meaning, not the inner meaning, as in the case of penalties and the case of rejecting the testimony of a father in favor of one of his children against the other; for he is suspect and his testimony is rejected because fatherhood is liable to suspicion. So, the circumstance is disregarded. But the likely cause of suspicion is the deliberate perpetration of *fisq*, versus indeliberate *fisq*.

Another proof for al-Shâfi'i's opinion is the Companions' acceptance of the Kharajites' statements concerning traditions and testimonies, though they are *fâsiqs* and *muta'awwils*. The Successors followed the Companions because the Kharajites abstained from lying and were ignorant of *fisq*.

If it is said: Could *Ijmâ'* be claimed with regard to this?

We shall say: No. For we do know that 'Alî and other *imâms* assented to the statements of the killers of 'Uthmân and the Kharajites. But we do not know this about all the Companions, for there may have been among them those who concealed their objections but did not object to the *imâm* since it is in the domain of *ijtihâd*. So how could this be? Even if all of them accepted their

report, it would not be established that all believed they were *fâsiq*? How can this be imagined, while the Kharajites are included as part of the people of *ijmâ'* and they did not believe that they were *fâsiqs* themselves; rather, they regarded their opponents to be so, believing in the *fisq* of 'Uthmân and Talḥa? In fact, 'Ammâr b. Yâsir, 'Adiy b. Hâtim, b. al-Kawwâ', and al-Ashtar al-Nakh'î, along with a group of dignitaries, agreed with them [the Kharajites], while 'Alî concealed his objection against them for fear of civil war.

If it is said: Even though they did not believe in the *fisq* of the Kharajites, they are *fâsiqs*.

We shall say: This is not true because ignorance of what constitutes unbelief and *fisq* is not in itself unbelief and *fisq*. In general, the acceptance of their [the Kharijites'] reports indicates that they [the Companions] have believed in rejecting the tradition of a *fâsiq* for suspicion, but they did not suspect the *muta'awwil*. Allâh knows best.

#### A Concise Conclusion about Transmission and Testimony

Know that responsibility, Islamicity, trustworthiness, and accuracy are common in transmission and testimony. As for freedom, maleness, sight, kinship, fixed number, and animosity, these six affect testimony, not transmission, for transmission has a general rule which is particular to a person so that he is not effected by friendship, kinship, and animosity. The children of the Messenger of Allâh, *حَدَّثَنَا اللَّهُ عَلَيْهِ وَسَلَّمَ*, reported from him—and every child reports from its father.

As for the blind person who accurately records utterances, his transmission is accepted even though his testimony is not, since the Companions transmitted from 'A'isha relying only on her voice. Thus, with her, they were like the blind.

Nor is it required for a reporter to be a scholar or a *faqîh*, whether or not his reporting confirms or contradicts *qiyâs*, since a carrier of *fiqh* may not be a *faqîh*, but he may convey it to one possessing a greater knowledge of *fiqh*. Therefore, only memorization is required. Furthermore, attending scholarly sessions for hearing *ḥadîth* is not required, for the Companions have accepted a report from a bedouin who only reported one *ḥadîth*. Indeed, if it is contradicted by the *ḥadîth* of a specialist scholar, then one preponderates over the other. A discussion will follow regarding this.

The transmission of a person who is known for his trifleness or looseness /1:162/ regarding the affairs of *ḥadîth*, or excessive heedlessness, should not be accepted; for all of this nullifies trust. As for trifleness or looseness regarding his own statements, this does not necessitate rejection.

It is not required for the reporter's genealogy to be known. Rather, if the trustworthiness of a person is known through experience, then his transmission should be accepted even though he does not keep his genealogy, let alone not know it. If a transmission comes from a totally unknown person, we do not accept it. Rather, those who accept the transmission of a person whose character is unknown do not accept it from one whose identity is not known; for if one knows his identity he may know

him for his *fiṣq*, contrary to the one whose identity is known though his *fiṣq* is not. But if a report comes from a person whose name is mentioned inconsistently as trustworthy or untrustworthy, his report is not accepted because of this inconsistency.

### *Chapter Three: Discrediting and Attesting*

There are four Subdivisions

First: The Number of Attestors

They have differed in this regard. Some *muḥaddiths* have required a fixed number concerning attestors and discreditors, just as in attesting witnesses. Al-Qâḍî said that there is no fixed number regarding the attestation of a witness or reporter, even though it is circumspect to seek corroboration in the number of attestors with regard to testimony. Others have stated that it is required for testimony but not for transmission. This, however, is a *fiqhî* discussion. In our view, it is more evident to require it with regard to testimony and not transmission because the number establishing transmission is no more than the transmitters themselves.

If it is said: Accepting the report of an individual has been authenticated by the Companions while accepting the attestation of an individual is not so. It must be referred to the *qiyâs* of *Shari'a*.

We shall say: We know much of what they *did not* do from what they *have* done. In our view, for example, upon accepting the *ḥadîth* of Abû Bakr, رَضِيَ اللهُ عَنْهُ, they used to accept his attestations of those reporting the *ḥadîth*. So how could it be that a condition of a

thing be greater than its principle? Matrimony is established by the statement of two, although fornication is not established with less than four—and *qiyâs* is not applicable here. We hold that, similar to the acceptance of a transmission from a slave or a woman, their attestation is also accepted. These are *fiqhî* matters that have been established by *qiyâs*, and there is no sense in dwelling upon them in the science of the principles.

## Second: Qualifying Attestation and Discrediting

Al-Shâfi'î said that one must qualify a discrediting [statement] but not an attestation. For [a transmitter] may be discredited with what he does not consider to be discrediting because of the diverse opinions about it. As for trustworthiness, it has only one quality.

Others have said that unqualified discrediting nullifies trust and that unqualified attestation does not yield trust because people hasten to rely on superficialities. Therefore, stating its qualification is necessary. Still others have said that qualification is necessary for both, thus integrating the statements of both sides.

Al-Qâdî holds that it is not necessary to qualify either of them, for if the attestor is not acquainted with this matter, then he is not eligible for attestation; and if he is acquainted, there is no sense in questioning him.

In our view, the correct opinion is that this varies depending on the condition of the attestor. When trust accrues regarding his insight and accuracy, his unqualified statement is sufficient. But regarding a person whose trustworthiness is known while his

acquaintance with the conditions of trustworthiness is not known, we may reexamine him, i.e. seek details if we do not find one who knows him. But if attestation and discrediting are in contradiction, we give preference to discrediting because the discreditor pursued additional information that the attestor was neither aware of nor refuted. Even if he refutes it, the trustworthiness of the attestor is nullified, in view of the fact that refutation is not ascertainable, unless the discreditor, say, accuses him of killing a person but the attestor says, "I have seen him alive afterward." Therefore, they would be in [open] contradiction.

It is said that if the number of attestors is greater than the discreditors, then attesting is given preference over the discrediting. But this is weak, for the preponderance of discrediting is because the discreditor is aware of additional information. This cannot be negated by additional numbers.

### Third: Attestation

[Attestation] occurs by statement, transmission from a person, acting in accordance with one's report, or ruling based on one's testimony. The highest among these four is the explicit statement, as in saying, "He is trustworthy and agreeable because I have known about him." But if one does not qualify it while he is acquainted with the conditions of trustworthiness, it is sufficient.

The second is when one transmits a report from him [the witness]. But they have differed as to whether this is attestation. The truth is that if it is known from his practice or his explicit statement that he does not accept transmission except from those



worthy of trust, then his report is attestation. Otherwise it is not. For the practice of a large number is to report from all whom they hear. But when they are asked to commend them, they keep silent. So there is nothing in his transmission specifying attestation.

If it is said: If one knows of *fisq* from him but still transmits from him, he will then be deceiving in religion.

We shall say: He did not oblige others to act, but simply said, "I hear so and so saying such and such." Therefore, he is telling the truth. Moreover, he may not have known of his *fisq*, nor his trustworthiness. Thus, he transmitted it, leaving investigation to whoever is willing to accept it.

The third is acting on the basis of transmission when at all possible to interpret it as being circumspect to act, or acting on the basis of another proof that agrees with it. But this is not attestation unless we know certainly that he has acted based on a tradition; then it is; for if the attestor acts in accordance with the transmission of an untrustworthy person, he then becomes a *fâsiq*, and his trustworthiness is nullified.

If it is said: He may have simply thought that Islam and the absence of *fisq* qualifies as trustworthiness.

We shall say: This applies to attestation by statement. We said that action is similar to statement, but this possibility is removed by qualifying trustworthiness. What we have mentioned stems from the sufficiency of unqualified attestation, for if it is required here to qualify [trustworthiness], it must be required,

with regard to the testimony of sales and marriage, to survey all the validating conditions, which is unlikely.

If it is said: He may know him to be trustworthy while others know him to be a *fâsiq*.

We shall say: Certainly whoever knows him [as a *fâsiq*] is not obliged to act according to [his report], as in the case of regarding the discredited, trustworthy person.

The fourth is that ruling is based on his testimony. This is stronger than attesting to him by statement.<sup>69</sup> As for the abandonment of ruling based on his testimony or his report, this is not discrediting because one may hesitate with regard to the testimony and transmission of the trustworthy for reasons other than discrediting. /1:164/ Why should this not be so! while abandoning action is no more than unqualified discrediting, which is not accepted by the majority. In sum, if no reason emerges to attest to an action by way of giving preference or another proof, it is like unqualified discrediting.

Fourth: The trustworthiness of the Companions, رُضِيَوا عَنْهُمْ

What has been held by the early generations of the *ummah*

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<sup>69</sup> Ghazâlî appears to be contradicting himself for he has stated in the beginning of Attestation that its highest form is an explicit statement, unless he means that the explicit statement is included in a judge's ruling based on the reporter's testimony. This, then, would be a higher form, for it combines both explicit endorsement and acting according to it. However, the wording could have been clearer.

and the majority of their successors is that their trustworthiness is known by Allâh's, attestation and praise of them in His Book, عز وجل. Therefore, this is our belief in them unless it is decisively established that one of them knowingly has committed *fisq*—but this has never been established. So, they are not in need of attestation. Allâh, ﷻ, said:

*"You are the best of peoples come for mankind. . . ."*<sup>70</sup>

*"Thus We have made of you a people justly balanced that you might be witnesses over mankind . . . ."*<sup>71</sup>

This is an address to those present in that time. Also, the Exalted said:

*"Allâh, indeed, was well pleased with the believers when they swore allegiance to you under the tree . . . ."*<sup>72</sup>

*"And the foremost, the first of the emigrants and the helpers and those who followed them in goodness—Allâh is well pleased with them. . . ."*<sup>73</sup>

Indeed Allâh, ﷻ, has mentioned the emigrants and the helpers in various places, praising them.

Moreover, [the Prophet], ﷺ, has said:

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<sup>70</sup>Qur'ân, 3:110

<sup>71</sup>Qur'ân, 2:143.

<sup>72</sup>Qur'ân, 48:18.

<sup>73</sup>Qur'ân, 9:100.

"The best of people are my generation; then those succeeding them. . . ."74

"If one of you were to spend enough gold to fill the Earth you would not reach the full stature of a Companion, not even half."75

"Allâh, indeed, has chosen for me Companions, in-laws, and helpers."76

So which attestation is more sound than the attestation of the Knower of all that is unseen and His Messenger, *حيّ الله علىّين وسلم* ?

Why should it not be so! while even if their praise was not received, still what has been broadly reported of their conditions—with regard to emigration, *jihâd*, sacrifice of life and wealth, including the loss of parents and relatives for devotion to and support of the Messenger of Allâh, *حيّ الله علىّين وسلم*—is decisively sufficient for their attestation.

Some people have claimed that their situation is similar to all others with regard to the necessity of investigation. Others have said that they were worthy of trust from the beginning of Islam until the advent of [civil] war, disputes, changing conditions, and shedding of blood; thereupon investigation became necessary.

The majority of the Mu'tazilites have stated that 'A'isha,

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<sup>74</sup>See Wensinck, *Concordance et Indices de la Tradition Musulmane*, 5:372.

<sup>75</sup>See Wensinck, *Concordance et Indices de la Tradition Musulmane*, 6:515-516.

<sup>76</sup>Ibn Hajar, *Tahdhīb al-Tahdhīb*, 5:227.

Talḥa, Zubayr, and the people of Iraq and Syria are *fâsiqs* for fighting the legitimate *imâm*. A group of earlier Mu'tazilites have stated that it is necessary to refute the testimony of 'Alî, Talḥa, and Zubayr whether they are together or separated from one another because among them there is a *fâsiq* whose person is not known. But, some have said that the testimony of each one of them individually is acceptable because his *fisq* is not identified. But when he is with his adversary, both of their testimonies are to be rejected, since we are certain that one of them must be a *fâsiq*. Some even suspect the *fisq* of 'Uthmân and [doubt] that of his assassins.

Yet all of this is insolence against the early generation and the Companions, contrary to the way of the *Sunna*.

Some people have even said that what has happened between them was based on *ijtihâd*, and that every *mujtahid* is correct, or that one is correct while the mistaken one is excused, thus his testimony cannot be rejected.

Others have said that this does not fall within the domain of *ijtihâd*; and certainly the assassins of 'Uthman and the Kharajites are decisively wrong, but they are not aware of their error. /1:165/ Therefore, they are *muta'awwils* and the transmission of a *fâsiq muta'awwil* cannot be rejected.

This [position] is more understandable than arriving at a position refuting the unqualified attestation of the Qur'ân.

If it is said: The Qur'ân praised the Companions. But who is a Companion, he who was a contemporary of the Messenger of Allâh,

حَدَّثَ بِهِ أَحَدٌ؟ one who met with him once or accompanied him for an hour? or one who had an extended companionship? And, [if yes], specifically for how long?

We shall say: The term applies only to those who accompanied him. Literally speaking, it is sufficient to apply *companionship* if it was [only] for an hour. But ordinarily, the term is used specifically for he whose companionship was lengthy. This is ascertainable through *tawâtur*, an authentic transmission, or the explicit statement of a Companion, "My companionship was lengthy." But determining the length can only be approximated and not exactly measured.

#### *Chapter Four: The Transmitter's Base and the Quality of his Reporting*

[The transmitter's] base of reliance is [1] the *shaykh's* reading to him, [2] his reading to the *shaykh*, [3] the *shaykh's* authorization, [4] the *shaykh's* passing of the book by hand to him, or [5] the reporter seeing the *shaykh's* hand writing in a book. These, then, are the five ranks.<sup>77</sup>

The first, which is the highest, is the *shaykh* reading the book to him in the context of reporting in order for it to be transmitted from him. This empowers the reporter to say, "So and so informed me," or "he said to me," or "I heard him say."

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<sup>77</sup>For an elaborate discussion on this, see Ibn al-Salâh, *Muqadima*, ed. 'A'isha Abd al-Rahmân (Cairo: Dar al-Kutb Press, 1974), p. 245-95.

The second is the reporter reading before the *shaykh*, who keeps silent as if saying, "This is correct." On this basis, transmission is permitted—contrary to [the opinion of] some *Zâhirites*. For if this is not considered correct, then the [*shaykh's*] silence and approval would be considered *fisq*, injuring his trustworthiness. Furthermore, if we hold this to be permissible, we would then have to hold that it is possible that he is lying when he states that it is correct. Indeed, if there were the slightest suggestion of carelessness or heedlessness, then silence would not suffice.

This empowers the transmitter to say only, "So and so reported to us and informed us by our reading to him." But they have differed with regard to his unqualified statement, "So and so has reported to us" or "I heard so and so."

The correct position is that this is not permissible because it implies verbal transmission, for the terms '*khavar*,' '*ḥadīth*,' and '*masmū*,'<sup>78</sup> all give the impression of verbalization. This would be lying on his part unless it is known by his explicit statement or his circumstances that he means by it reading to the *shaykh*, not actually hearing his *ḥadīth*.

The third is authorization, as in saying, "I authorize you to transmit from me a certain book . . ."; or, "I authorize you to transmit what you authenticate from among my reports." At this

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<sup>78</sup>Often these terms are used interchangeably with some stipulations. By '*khavar*' and '*ḥadīth*,' they mean *reporting*; and *masmū*' means that which has been heard.

point circumspection becomes necessary in identifying the report specifically heard. But if he is restricted to saying, "This is what I heard from so and so," then transmission is not permissible from him because he did not permit transmission. He may not allow transmission because of his awareness of a defect in it, even though he has heard it.

Similarly, if one says, "I have a testimony," he cannot testify unless he is told, "I permit you to testify based on my testimony." Otherwise, this testimony is not recognized before the judge, since transmission is a testimony and a person may be speaking loosely. But when seeking decisive testimony he may hesitate as well.

Furthermore, authorization empowers the reporter to say, "He has reported or told us by way of authorization." As for his unqualified statement, "He has reported to us," some hold this to be permissible. But this is corrupt because it implies hearing his statement, which is not true, as we have mentioned in [the phrase] *reading to the shaykh*.

The fourth is passing the book by hand. Its form comprises the *shaykh's* saying, "Take this book and transmit it on my authority because I have heard it from so and so." /1:166/ Simply passing the book by hand without this statement is meaningless. But even when these words are present, passing the book is useless because this is an unwarranted formality which some *muhaddiths* have invented. But it is useless. Just as the transmission of a *hadith* is permissible by authorization, so it is necessary to act based on it—in contradistinction to [the opinion of] some of the *Zahirites*. Thus, the purpose is to know the rectitude of the report,



not to identify the channel which makes it known. His statement, "I heard this book; therefore, you may transmit it on my behalf," as far as identification, is similar to his own reading of it or his being read to.

As for their statement that he is capable of reporting it to him, so let it be—what is the need for it? It necessarily follows that reading to him becomes invalid because he is himself capable of reading. Furthermore, he must not report during the life of the *shaykh* because he is capable of referring to the original source, as in the case of testimony. Therefore, this indicates that this [form] is not valid in transmission.

The fifth is reliance on handwriting, that is, on seeing a script in his handwriting and stating, "I have heard such and such from so and so." It is not, however, permissible to transmit on his [the *shaykh's*] authority because transmission is the same as testifying that the *shaykh* has said this. But the handwriting by itself cannot identify him in this fashion.

Indeed, it is possible for him to say, "I have seen it handwritten in a book and I thought it was the handwriting of so and so." For one's handwriting may be confused with another's. But if he says, "This is my handwriting," then his statement would be accepted. Yet he [the transmitter] should not transmit on the *shaykh's* authority as long as the *shaykh* did not authorize him to transmit, either by his explicit statement or through the circumstantial evidence of him being poised to transmit *ḥadīth*.

Now if a trustworthy person says, for example, that this is an accurate copy of Bukhārī's book and he sees in it a *ḥadīth*, then he

is not permitted to transmit it.

As for being obligated to act accordingly, it is incumbent for a *muqallid* [a follower] to ask a *mujtahid*. But some have held that it is not permissible for a *mujtahid* to act on its basis if he did not hear it. Others have stated that if the *mujtahid* knows it to be correct on the basis of a trustworthy person's statement, then acting according to it is permitted. For the Companions of the Messenger of Allâh carried the documents of *zakât* to various territories, and people honored these documents on the testimony of the bearer that they were true documents, though all did not hear it from him [the Prophet]. For this imparts peace of mind and the likelihood of their being true.

In sum, one ought not transmit except what he knows, that is, what he has first heard and preserved and then recorded, until the time of transmission, so that he knows that what he has transmitted is exactly what he has heard, nor has a [single] letter been changed. For if he doubts anything of it, he must abandon transmission. From this principle stems several discussions.

**I. DISCUSSION:** If from among what he has heard from al-Zuhri<sup>79</sup> there is a *ḥadīth*, for example, in which he doubts whether he has heard it from al-Zuhri or not, then he is not permitted to say "I heard al-Zuhri" nor say "Al-Zuhri said" because his statement

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<sup>79</sup>Muḥammad b. Muslim b. 'Abd Allâh b. Shihâb al-Zuhri (d. 124/742). See Zirikli, *al-'Alâm*, 7:97; and Ibn Hajar, *Tahdhīb al-Tahdhīb*, 9:395.

"Al-Zuhri said" is like a testimony on behalf of al-Zuhri, which is not permitted except by knowing because he may have heard it from other than him. Thus, he is like one who heard a statement not knowing whether Zayd or 'Amr stated it. So, he is not permitted to testify on behalf of Zayd. Further, we say if he has heard a hundred *ḥadīth* from one source, and among them there is one he knows he did not hear, but is confused as to which one it is, he should not transmit it. Furthermore, he should not transmit any of them on behalf [of the source], since it is possible for any of the 1:167/ *ḥadīths* to be the one he did not hear. Even if he presumes that he most likely heard a particular *ḥadīth* from al-Zuhri, still it is not permissible for him to transmit it on the basis of the presumption of its likelihood.

Others have said that it is permissible because reliance, in this case, is based on his presumption of its likelihood. This is far-fetched because a judge's reliance on the likelihood of his presumption regarding a testimony is because he does not know the truthfulness of the witness. As for the witness himself, he must be sure because it is conceivable to charge him with the obligation to testify only on what is certainly known and what may be witnessed. However, obligating a judge not to rule except on the basis of the eyewitness's truthfulness is absurd. Similarly, it is not possible for a transmitter to know the exactly the truthfulness of the source. But, he has a way of identifying his statement by hearing. But if this is not realized then he must not transmit.

If it is said: It is permissible for one in our age to say that the Messenger of Allāh, ﷺ, said this but does not know its

truth with certainty.

We shall say: There is no way for him to verify this. Moreover, when he says that the Messenger of Allāh, ﷺ, said this, it does not convey that he has heard it. Rather, it is understood from his statement that he heard this *ḥadīth* from someone else or from what someone has transmitted in a book that he relied on. But it is not incumbent for everyone who hears this to act accordingly because this is a *mursal*<sup>80</sup> [unconnected] *ḥadīth*. It is not known from what source he is repeating it. Rather, acting becomes necessary only when the source is identified so that his condition and trustworthiness can be examined—and Allāh knows.

**II. DISCUSSION:** If the *shaykh* rejects the *ḥadīth*—and his rejection is similar to a denier decisively holding the transmitter to be lying—and does not act on its basis, then the transmitter does not become impugned because impugnement may not be established by the statement of one person. For he is accusing his *shaykh* of lying, just as the *shaykh* is accusing him of lying, while both are trustworthy. It is like two clear proofs which are mutually contradictory. Therefore, this does not necessitate impugnement.

But if he rejects it with hesitation, saying, “I do not remember it,” then it is permissible to act in accordance with the report, since the transmitter was certain that he heard it from him, and the

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<sup>80</sup>This refers to a *ḥadīth* based on a chain of transmitters that is not traced further back than the generation of the Successors, failing to identify the source among the Companions who related it from the Prophet.

latter is not decisively accusing him of lying, and both are trustworthy. Therefore, the truthfulness of both is possible.

Al-Karkhî is of the opinion that the *shaykh's* forgetfulness of the *ḥadīth* nullifies it. And upon this he built the rejection of the report of al-Zuhrî—“Any woman who marries without the permission of her guardian . . . ,”<sup>81</sup>—arguing that the *shaykh* is the source, and it is not for him to act according to the *ḥadīth*, since the transmitter is his subordinate. So how can he act on its basis?

We shall say that the *shaykh* may act in accordance to it if a trustworthy [transmitter] reports to him what he heard from him. But if some doubt lingers in him in spite of the trustworthy person's transmission, then he should not act according to it. But as for the transmitter, he should act in accordance with it if he is certain that he has heard him. As for all others, they should act based on it to maintain the attestment of both.

Furthermore, it is incumbent upon the judge to rule in accordance with the statement of a lying witness who is overtly trustworthy. But this is forbidden for the witness.

For the common Muslim, it is incumbent to act according to the *fatwâ* of the *mujtahid*—even if his *ijtihâd* has changed, as long as he is unaware that his *ijtihâd* has changed. But the *mujtahid* cannot act according to his previous opinion if it has changed, for he knows it. Therefore, the action of each one is based on his situation.

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<sup>81</sup>The rest of the *ḥadīth*, according to al-Tirmidhî, 2:398-401 is, “. . . her marriage is void.”

Mâlik, al-Shâfi'î, and the majority of the theologians have held this view because forgetfulness is common to humans—and what *muhaddîth* can recall in a moment all that he has received during his lifetime? Therefore, it is similar to the *shaykh's* doubt of an addition to a *ḥadîth*, /1:168/ or the inflectional variances in a *ḥadîth*, since this does not void it as result of the frequency of doubt occurring in it. And so it is with reference to the text of a *ḥadîth*.

**III. DISCUSSION:** A trustworthy reporter individually reporting an addition to a *ḥadîth* to the exclusion of the group of transmitters is acceptable to the majority, whether or not the addition is in words or in meaning. For if he exclusively transmits a *ḥadîth* not reported by the other transmitters, it would still be acceptable. This is similar to his individual reporting of an addition, for a trustworthy reporter is not held suspect on the basis of possibilites.

If it is said: It is unlikely that he alone recorded this addition while all the rest listened attentively.

We shall say: It is better for others to corroborate if possible. But he is decisive about hearing it and others did not decisively negate it. Thus, it may have been that the Messenger, ﷺ, mentioned it in two sittings. So, when he mentioned the addition, perhaps only one [of the reporters] was present. Or he may have repeated it in only one sitting and mentioned the addition only at one time with only one [reporter] present.

It is also possible that whoever reported the incomplete text joined the sitting later and did not hear it completely. Or they may have joined in attendance and all but one forgot the addition. Or a surprising distraction may have occurred while the *ḥadīth* was being given and the attention of some was distracted. Thus, only he who was attentive recorded the addition. Or occupying thoughts may have occurred in some, preventing them from recording the addition. Or a temporary disturbance may have compelled some to leave before completion. So if all this is possible, the trustworthy should not be impugned, as far as possible.

**IV. DISCUSSION:** The transmission of part of a report is not permitted according to most of those who have forbidden the transmission of *ḥadīth* through their meaning.<sup>82</sup> But those who permit transmission on the basis of meanings hold this to be permissible if the transmitter had transmitted it once in its entirety and that the mentioned part is not dependent on what has been omitted in a way that alters its meaning. But if it is dependent—like a condition of a particular worship or its essentials, or what completes it—then to transmit only a part of it is distortion and deception. But if he has transmitted a *ḥadīth* once in its entirety and another time incompletely in a way that does not alter it, then it is permissible, but on the condition that suspicion and

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<sup>82</sup>Ghazālī refers here to one side of a subtle dispute among muḥaddiths regarding the transmission of a *ḥadīth* by relating its general meaning as opposed to its verbatim transmission.

accusation does not reach the transmitter. Yet if he knows that he may be accused of confusing transmission, then it is incumbent upon him to be cautious.

**V. DISCUSSION:** Transmitting a *ḥadīth* by its meaning, versus verbatim, is prohibited for one who is ignorant of the [various] contexts of addresses and of the subtleties of words.

As for one who knows the difference between the likely and the unlikely, the overt and the more overt, and the common and the most common, al-Shāfi'ī, Mālik, Abū Ḥanīfa, and the majority of the *fuqahā'* have permitted him to transmit it by its meaning if he has understood it. But another group has said that it is only permissible for him to substitute a word with its synonym or what equals it in meaning, like substituting *sitting* for *sitting down* or *cognizance* for *knowledge* or *ability* for *capability* or *viewing* for *seeing* or *prohibited* for *forbidden*, or others whose meanings cannot be confused. In sum, it is all that cannot be exposed to differences in inference and understanding. However, this is only in regard to what is decisively understood, not what is understood through reasoning, which is disputed by researchers.

Proof for the permissibility of this for a scholar is the consensus on the permissibility of explaining the *Shari'a* to non-Arabs in their own tongue. Therefore, if it is permissible /1:169/ to substitute Arabic with corresponding non-Arabic [words], then Arabic into corresponding or equivalent Arabic is a priori permissible. This has been the way of the envoys of the Messenger of Allāh, ﷺ, in various lands, conveying his commands in



their own tongue.

Similarly, he who hears the testimony of the Messenger of Allâh, ﷺ, may testify on the testimony in another language. And this is because we know that there is no divine obligation with regard to words. Rather, the purpose is to understand the meaning and convey it to people. But this does not apply to *tashahhud*<sup>83</sup> or *takbîr*<sup>84</sup> and religious duties requiring specific words.<sup>85</sup>

If it is said: He said, peace be upon him:

May Allâh make prosperous he who heard my speech, retained it, and then delivered it as he has heard it; for a receiver may be more aware than the one who heard it; and there may be bearer of *fiqh* who is not a *faqîh*; and it may be that a bearer of *fiqh* may convey to one who is more of a *faqîh*.

We shall say: This is the proof because he mentioned the *ratio legis* as being the difference in understanding among people. Therefore, nothing prevents [the occurrence of] what people do not differ about, like synonymous words. Furthermore, this *hadîth* itself has been transmitted in different words, though the meaning

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<sup>83</sup>The term refers to the Muslim declaration that God is one and Muḥammad is His Messenger.

<sup>84</sup>This refers to the phrase *Allâhu Akbar* meaning God is great

<sup>85</sup>Al-Subkî, *al-Ibhâj fî Sharḥ al-Minhâj*, 2:345, in his discussion of *mursal* tradition almost repeats Ghazâlî's words here verbatim.

is one, although it is possible that all the words may be from the utterances of the Messenger of Allâh, ﷺ, at different times. But most likely it was one *ḥadīth* transmitted in different words; for it has also been reported as:

“May Allâh have mercy on one who. . . .”

“May Allâh make prosperous he who. . . .”

And it has been reported: “

“A bearer of *fiqh* may have no *fiqh* himself. . . .”

“A bearer of *fiqh* may not be a *faqīh*. . . .”

And so it is with single addresses and single events which have been reported by the Companions, رَضِيَ اللهُ عَنْهُمْ, in different words. This, then, indicates permissibility.

**VI. DISCUSSION:** The *mursal* [*ḥadīth*] is acceptable, according to Mālik, Abū Hanifah, and the majority [of legists], but is rejected by al-Shāfi‘ī and al-Qādī,<sup>86</sup> which is the preferable opinion. Its form is such that he who was not a contemporary of the Messenger of Allâh, ﷺ, states, “The Messenger of Allâh, ﷺ, said . . .”; or one who was not a contemporary of Abū Hurayra states, “Abū Hurayra said . . .” The proof for this is that if a [transmitter] mentions his *shaykh* without attesting to his

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<sup>86</sup>Ghazālī attributes a different opinion to al-Qādī regarding *mursal ḥadīth* in his earlier work, *al-Mankhūl*, p. 275. Al-Subkī, *al-lbhāj fī Sharḥ al-Minhāj*, 2:339, cites al-Qādī as saying, “We in general do not accept *mursal* traditions, even in the places where al-Shāfi‘ī accepted them to solve controversies. . . .”