
#### Abstract

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## A critical edition

of

## Kitāb al-istikhrä li-ahkäm al-kharaj

by

Abū al-Faraj 'Abd al-Rahmän b. Shihāb al-Dín Abū al-^Abbās Ahmad b. Rajab al-Hanbalī<br>(Born 736 AH/1335 AD. Died $795 \mathrm{AH} / 1393 \mathrm{AD}$ )

by

## A.S.M.Abdur Rahim

Thesis presented to the Faculty of Arts,
University of Glasgow, for the degree of Doctor of Philosophy

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## KEY TO TRANSLITERATION

The following system is employed for transliterating Arabic in this thesis.
A. Consonants.


## Abstract

This thesis consists of a critical edition of the Kitàb alist!khrāj li-ahkām al-kharāj, which is basically a review of the system by which land is taxed in an Islamic society. It covers the legal intricacies concerning this issue, ranging through the period of the early days of Islam to the eighth century hijrah.

The analysis is predominantly based on three manuscripts, obtained from the Uppsala, Paris and Cairo
libraries. It is divided into two parts, the former containing the introduction and the latter the text. The introduction again, is sub-divided into three chapters: the first giving a general outline of the work and the text, the second dealing with the author, and finally the third being a brief discussion of the kharaj system. A biblography of the introduction is included. Also included is a llst of the verses of the Qur'än and narrations from hadith quoted, as well as a list of the books referred to, in the text.

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## INTRODUCTION

## Chapter One

The Work And The Manuscripts

### 1.1 General Outline

Kharāj is a tax levied on the lands of non-Muslims. It was first introduced in Arabia by the Prophet Muhammad after the Battle of Khaybar, but its detailed form was not emergent until the time of 'Umar b. al-Khattāb. During 'Umar's time Iraq, Iran, Egypt and many other countries were conquered by the Muslims. Instead of distributing these lands amongst the victorious soldiers, 'Umar retained them for the benefit of the Muslims in general. He claimed that by doing so he was following the principles of the Qur'ān and the sunnah of the Prophet. Although some of the Companions of the Prophet objected to this, the majority of them accepted it as being in accordance with the shari'ah.

The word kharāj was borrowed by the Arabs from the administrative language of the Byzantines (Greek khoregia means defragment of public costs), and associated with the Arabic root kh.r.i. Although it seems often to have denoted 'tax' in general, Islamic Theologians came to apply it specifically to land tax, since it was taken to be an Arabic word meaning the yield from land. It is this sense that is discussed by Abù al-Faraj in Kitäb al-istikhrāj li-ahkām alkharäj.

The Muslims were careful to levy some form of tribute on the lands they conquered as a reflection of their overlordship. It was left to the local community to raise this tribute according to their own traditions and customs. Iraq and Persia can be taken as an example. In levying this tax, early Musim leaders always tried to follow the principles of the qur'an and the traditions of the Prophet. Whilst some historians seem to use the terms kharaj and jizyah as having the same meaning, Islamic Jurists use kharaj to mean the tax levied on the lands of the inhabitants of conquered territories who were nonMuslims.

Although at first Muslim rulers did not have any difficulty in imposing kharāj, as time passed they were faced with many problems to which they needed to have a proper Islamic solution. This became so acute that the Abbasid Khalifah Harin al-Rashìd appointed Abū Yūsuf to write him a report on the subject of kharāj. Prior to this, Abü Hanifah had worked on the subject as part of his analysis of fiqh, but not as an independent subject. Abū Yūsuf died in 182 H ; his book became a standard work for Muslim rulers and scholars on the subject.

The basis of his book was a report and analysis of the actions of the Prophet, the Companions of the Prophet, and of the opinion of those Islamic scholars who had written on the subject to the khalifah of the time. In reporting, he mentioned the names of all those individuals through whom he had received this information. At this time the collection of hadith was in process and muhaddithūn used to establish the
authority of their narrated hadith by elaborately detailing the sources of their citations. In writing Ritāb al-kharāj, $A b u ̄$ Yūsuf adopted this style, and so in one sense the book could be said to be a book of hadith.

Kharäj was the main source of state revenue for Islamic rulers and its importance was felt strongly. With gradual changes of circumstances, increasing need was felt for a rigorous analysis. Various scholars like Yahyā b. Ādam al-Qurashī and $A b \bar{u}$ Ya'là al-Māwardī wrote books on the subject, but there was still room for more information.

In the eighth century of the Hijrah 'Abd al-Rahmān b. Shihab al-Dīn Ahmad b. Rajab al- Hanbalī, known as Imam Abū alFaraj, wrote on the subject drawing on the major works of hadīth. His Kitāb al-istikhrāj li-ahkām al-kharāj is an examination principally of the differing views of earlier scholars and an attempt to establish the rules that should apply.

### 1.2 Manuscripts

There are three known manuscripts of the work: Uppsala II,176, Paris, 2454, and Cairo I,548. I am grateful to my supervisor Professor J.N.Mattock, the head of the Department of Arabic and Islamic Studies at Glasgow University, who arranged for me to examine the manuscripts in Uppsala and Paris. I would also like to express my gratitude to these two libraries who provided microfilms at the request of my
supervisor. Cairo failed to comply with a similar request, but I managed to obtain an unedited printed copy of the manuscript.

The Uppsala manuscript appears to be the oldest of the three. It was transcribed by Yahya b. Shams al-Din al-Armanazī, whose name appears on the cover of the book. Also on the cover it states that the manuscript was copied on the tenth of Rabi. al- Awwal 1078 H , and on the flyleaf at the end there is a note to the effect that the copyist collated his copy with its original version, that of 'Abdullah Ahmad al-Mälikī who , he says, completed his work in Shawwäl 863 H.

Because of the way the scribe concludes his manuscript, it might appear that the author, Imám 'Abd al-Rahmän b. Shihäb al-Dīn Ahmad b. Rajab al-Hanbalī, actually completed his book on the above date i.e. 863 H . However, not only does this date not appear in the other two manuscripts but if one considers the lifetime of the author $A b \bar{u}$ al-Faraj, it can be seen that this claim is not feasible, as the author died in 795 H . Thus the copy which was used by Yahya al-Armanāzī as the original for his manuscript was written sixty-eight years after the death of the author. No information is available concerning the two copyists.

As to the Paris manuscript, there is no information as to the date of its copying or the identity of the copier. The hand indicates a later date than that of the Uppsala manuscript. There are many places where the writing is unclear, and
omissions and blank spaces are not uncommon, but it is still clearer than the Uppsala one. The printed version of the Cairo manuscript was "checked by an expert from al-Azhar University". In this copy there are many blank spaces, with a note stating that this is so in the original; occasionally, important words and even sentences are either missing or differ substantially from the readings of the other manuscripts.
1.3 Sigla and Symbols used in the apparatus criticus

For the Paris manuscript the letter $P$ is used.

For the Uppsala manuscript the letter $U$ is used.

For the Cairo manuscript the letter a is used.

For omission the symbol "-" , for duplication the symbol "x" and for addition the symbol " + " are used.

### 1.4 Orthograpiny

The copyists' orthography in all three manuscripts is generally good and clear, but the copyists of the Uppsala and Paris manuscripts seemed to have paid little attention to the recognised form of classical Arabic usage with regard to hamzah. In the Uppsala manuscript generally, and in many
places in the Paris manuscript, hamzah is either omitted or replaced by yā.

The copyist of the Uppsala manuscript seems to have paid little attention to diacritical points, as there are several occasions where words are written without dots and a number where the dots are misplaced due to similarity in the appearance of the letters. The copyist does not distinguish between final hä' and tā’marbūtah, which is never written with dots. In the Paris manuscript these dots are sometimes written. Occasionally both use tā tawilah instead of tā' marbūtah.

The copyists of the Paris and Cairo manuscripts seem not to have been too careful in their copying. They are guilty of occasional omissions. These copyists also make mistakes in citing verses from the Qur'an in a few places.

Several corrections have been made in the Uppsala manuscript by either (a) striking out or (b) entering additions either between lines or in the margin. In such cases, the copyist uses the sign $\circlearrowleft$ at the point where the words are missing. He uses the symbol 0 for a full stop.

The Cairo copy, from which the printed copy was prepared, is full of blank spaces where the copyist has omitted some words. The printers note such places as Bayad al-asl. Through comparison of the three manuscripts, it is apparent that the
grammatical usages in the work should be attributed to the author himself and not to the copyists.

### 1.5 Preparation of the Text

In editing this work $I$ have tried to ascertain the original reading of the text whenever possible. The Uppsala manuscript has been taken as the basis as it seems to be the oldest one. Where there is strong evidence of error in this manuscript. the text has been emended from one of the other two manuscripts and the original reading recorded in the apparatus. Any differences found in the manuscripts are also recorded. Letters altered to conform with modern arabic orthography are not mentioned. Words which had no diacritical points are also corrected without a note as these occur too frequently to be mentioned.

## Chapter Two

## The Author

### 2.1 His Identity

The identity of the author is clear from the first line of all three manuscripts: 'al-Shaykh al-Imām al-`Allàmah Abut al-Faraj `Abd al-Rahmān b. al-Shaykh al-Imām Shihāb al-Dīn Abī al‘Abbās Ahmad b. Rajab al-Hanbalī said...'.
2.2 Abd al-Rahmān b. Ahmad b. Rajab alHanbalī

Imām `Abd al-Rahman was born in Baghdad in the quarter of Salāmī in the year 736 A.H. (1335 A.D.), and studied the Qur'ān and hadith there. He was known as Abū al-Faraj Zayn alDian and Jamāl al-Dīn. He migrated from Baghdad to Damascus and lived there until he died in 795 A.H. (1393 A.D.). He was a muḥaddith, hāfiz, Islamic jurist (faqīh) and historian. He became a very renowned scholar of hadith of his time. Many later Hanbali scholars are products of his teaching.

His known treatises are as follows:
1.

2.

3.

4.

5.

6.
7.

لسطاتّ الدحا
8.
11.
(اهحـال التَدحم
12.
13.
بلعدالدسلامغهـِبا
14.

التوحيل
15.

2.3 Significance of this work

The Kitāb al-kharāj of $A b \bar{u} u \bar{u}$ Yup was an anthology in the form of a report. As mentioned before, this was prepared in response to a request from the Khalífah and it covered many
disputed issues concerning kharāj. Abū Yūsuf referred to the actions of the Prophet and his Companions and, where appropriate, quoted from the Qur'an. In conclusion he gave his own interpretation of, and comments on, what he believed to be authentic accounts of these. The book depended heavily on the citation of various authorities on various aspects of kharäj and to these he did not add his own commentary or explanations.

Another important work of reference on this subject was produced by Yahyä b. Ādam al-Qurashī (who died twenty one years after $A b \bar{u}$ Yūsuf), in which he cited 640 narrations.

Although the subject was dealt with by the majority of Islamic jurists, as part of their analysis of figh, a particularly important author on this topic was $A b \bar{u}$ 'Ubayd al-Qāsim b. Salläm, who died in 224 H. In his Kitäabal-amwäl, he concentrated on kharäj, jizyah and other financial matters. He maintained the same pattern as his predecessor Yahya b. Ādam, but covered a wider field, citing 1998 narrations. Along with these, he referred to the opinions of some of the Islamic scholars of his time, occasionally quoting mälik, and frequently gave his own personal conclusion.

Later, in the fifth century of the Hijrah, two books which covered a wider field of political matters included chapters on kharäj of some importance. Both are entitled al-Ahkām alsultāniyyah, one being written by Abū al-Hasan b. Habī alBaṣr $\bar{i}$ al-Māward $\bar{i}$ (died in $450 H$ ), and the other by Abū Ya`lā

Muhammad b. al-Husayn al-Farra' al-Hanbalī (died in 457H) alMāwardi's main aim was to explain the Islamic system of government and in doing so, he discussed the relevant aspects of jizyah, kharāj and land laws. Neither he nor Abū Ya`lā depended on citing narrations alone. Abū Ya`Iā covered a wider spectrum than al-Māwardi; he also supported his arguments with evidence from the Qur'ān and the actions of the prophet and his Companions.

There clearly remained scope for debate on many parts of the kharāj system. In the eighth century of the Hijrah Abū alFaraj produced his Kitāb al-istikhrāj li ahkām al-kharāj, in which he cites the opinions of a large number of scholars and some fifty eight different books, and then tries to demonstrate the correctness of his own views which have a Hanbali slant. One great difference between this book and its predecessors was $A b \bar{u}$ al-Faraj's style. Whereas previous authors had been content with simply citing narrations, Abü al-Faraj began by giving definitions of kharāj followed by an analysis of the subject in the light of the Qur'an, sunnah and the opinions of the scholars. However, he also maintained the tradition of citation but with his own responses, according to the Qur'än, etc., as well.

## CHAPTER THREE

## Kitäb al-istikhrāj Ii-ahkäm al-kharāi

### 3.1 Background

Because the lands that became part of the Islamic empire in the expansion of the 1st century, were occupied in various ways ( anwah, treaty, acceptance of Islam, etc.), the question soon arose as to what were the Islamic laws regarding the administration of these lands and what should be the method of imposing taxes on them. Without having a clear cut policy. Islam could not claim to be a complete code of life.

It is not correct to say that the fiscal system in the early days of Islam fell into two classes, religious and secular revenues, as stated by Nicholas P. Aghnides in his Mohammedan Theories of Finance. ${ }^{1}$ The Qur'an lays down very precise prescriptions as to the policy of the ummah regarding expenditure and income. It lists the items on which zakah and fay' income can be spent. The principle is established that wealth should not accumulate in the hands of a few, and thus Islam advocates a great deal of legal expenditure. On the other hand it not only discourages but condemns extravagance. The Qur'an says: 'Indeed the spendthrifts are the brothers of Satan'. ${ }^{2}$ Hoarding is equally condemned because it keeps wealth out of circulation. In imposing taxes on various types of lands occupied by the Muslims, these Qura nic principles

[^0]remained the dominant factor. Thus the importance of kharāj cannot be differentiated from that of other religious injunctions.

Rharāj was first imposed on the lands of Rhaybar during the time of the Prophet, but this did not last due to the fact that the Jewish inhabitants were driven out because of their treachery. Until the time of 'Umar b. al-Khatteab, the kharäj system did not take any institutional shape. It was 'Umar who decided that territories which had been won by force should not be distributed amongst the soldiers that had fought to gain them. Instead they were given a bounty and booty from the state treasury to recompense them for their efforts, whilst the lands were kept for the benefit of the Muslims in general. Thus 'Umar introduced state ownership of the occupied lands and on that basis imposed kharāj, which was collected from those people to whom the lands were given as places of settlement. Therefore it can be said that 'Umar was the father of the modern Land Tax System of Isläm, introducing a method of taxation which is still in use fourteen hundred years later. This system was the result not only of immediate circumstances but also Qur'änic prescriptions and suggestions from the Companions of the prophet. The kharāj system is thus both a religious and a secular system.

### 3.2 Kharāi= Definition and meaning

Fharāj:- the general view of scholars is that kharäj means a tar: imposed on lands mainly conquered by force of arms,
irrespective of whether the owner is a minor or an adult, free or slave, Muslim or infidel. ${ }^{1}$ Some scholars, for example, Ibn 'Atiyyah, suggest that kharāj is a tax which is imposed for a certain period of time. In the Qur'ān both kharaj and khari are used with the same meaning. According to al-Asma‘ $\bar{i}$, khari is what is imposed once and kharaji is what is imposed a number of times. But Ibn 'Atiyyah says that it is a difference of usage only; both words carry the same meaning. Ibn 'Abbas says that khari means uirah (rent, wages, hire). Abū 'Ubayd says that kharāj is kira' (rent) and ghallah (produce of land ). He arrived at this conclusion from a hadith of Anas in which the word kharàjis used in place of ghallah. al-Azhari says that kharāj is the name of an impost on wealth, so that it can apply to tax, to fay' wealth, to jizyah and to produce of the land. He says the word khari is a masdar only. There is a hadith in al-Musnad which says that the Prophet Muhammad, in his letter to the Byzantine emperor, used the word kharaj for jizyah. ${ }^{2}$

According to the jumhūr (majority of jurists), if the land is held by treaty then kharāj on it means jizyah, so it will be revoked if its owner accepts Islam; jizyah cannot be imposed on a Muslim. But Abī Hanifah differs from this view and says that kharāj is a price (thaman). Once it is imposed the land will remain as kharäj land regardless of whether its owner is
a Muslim or a non-Muslim.

Opinions are again divided as to the meaning of kharaj when lands are forcibly conquered ( ${ }_{\text {anwah }}$ ). Abū Hanífah and a group of Shāfi`ites say that its meaning is price (thaman). They say that 'Umar gave the ownership of the land to the previous owners in exchange for kharāj. Another group of Shāfi`ites say that it is not thaman but ujrah (rent, wages). They say that - Umar made the land equivalent to waqf land and authorised its owners to keep it in exchange for kharäj, i.e. rent. This view is accepted by the Hanbalites, al-Shāfi’ $\bar{i}$ himself and the Mäikites as well. But with this view a dispute arises, since. for ujrah a time limit must be mentioned; however we find that 'Umar conferred the ownership of these lands for an indefinite period. In replying to this, scholars took differing views:-
(1) that there is no need for a time limit when the transaction is between Muslims and non-Muslims. They quote the example of the action of the Prophet, with the people of Khaybar, in which he did not fix any time limit. This view was supported by $A b \bar{u}$ Ya'là, Ibn ‘Aqīi and $A b \bar{u}$ alKhattäb. But this reply is very weak, because dhimmis and Muslims are equal in business transactions, as recognized by almost all scholars.
(2) some scholars say that to rent annually without mentioning a fixed period is valid in a rental system. This is the view of the Hanbalites and many other scholars. Therefore 'Umar's action was not contrary to the system of ujrah. (3) Abü Ya`lā makes another suggestion. He says that 'Umar
did not fix a time because of the general interest of the Muslims, thus suggesting that it is lawful not to fix a time if this is in the interests of the Muslims in general.
(4) Some scholars say that it is not ujrah in real terms, but is merely used in the meaning of ujrah (rent). Ibn 'Aqī says that kharāj does not constitute an ujrah in itself; rather it is a knot ( agd) the tying of which gaurantees the common intersts of the Muslims.

According to Ibn Taymiyyah the imposition of kharāj is an independent procedure. It is not a sale price or ijarah (rent) for the land, regardless of whether this is land held by treaty or forcibly conquered. A house, for example, may be rented out but the tenant can never be treated as the owner nor can he ever sell the house. If kharāi was simply ijarah then the tenant would in fact be the owner of the house and not the holder of a simple tenancy, since it is agreed by scholars that the occupants of kharàj property would have the right of ownership and so be entitled to sell it. On the other hand if kharaj was a sale-price, then the house on the land would also have to be included in the kharaj. As neither is the case, kharāj is therefore a separate and independent matter.

3-3 The Role of the Prophet Upon Kharäi. What do we find in sunnah regarding kharāj? The hadith quoted in the sahih of Musiim and narrated by Abu Hurayrah,
says that the Prophet said that Iraq, Syria and EgYpt would

$$
\angle \tau
$$


 (2) Another hadith narrated by Abū al-Dardä', from the $\varepsilon^{\cdot s}$ ? is divorced from the condition in which the Apostle of God Prophet, as saying that one who binds jizyah upon his neck
(1) Abū 'Abd Allah narrated from Mu`adh, a Companion of the Ahādith about entering into kharaji land: lands of non-Muslims.
lands, suggesting that it would be a duty to be imposed on the which they discouraged Muslims from entering into kharāi are many narrations of the Prophet and his Companions in would come under their occupation as a result of the use of

$$
\begin{aligned}
& \text { 1. Text P. } 10 \\
& \text { 2. Text P. } 15 \\
& \text { 3. Text P. } 12
\end{aligned}
$$




 period they would get forces and that there would be dhimmah
 kharāj system.' Another hadith narrated by 'Urwah says that starting position. This is a good intimation of the future
 refuse, and prevent others from, payment of their respective ays that the Prophet said tha
status of being a nonbeliever from his neck, and then puts it back on his neck, has turned his back to Islam. ${ }^{1}$
(3) Anas b. Mälik narrated from the Prophet that he said that the one who retains kharāj when he can avoid it, on him there will be the curse of Allah, His angels and all mankind. 2

All three of these ahadith seem to discourage Muslims from acquiring land with kharàj imposed on it. But the first two are not specifically about kharaji and there is doubt about the authenticity of the third. Many of the scholars of hadith including Ahmad and AbĬ Hatim say that this hadith is munkar.
(4) It was reported from Ibn 'Umar that he used to hate entering into kharàj, whereas kharāj was practically introduced in the time of 'Umar. Yahyā b. Adam reported a hadith like this from the Prophet which was reported by a man from Juhaynah, but the muhaddithūn disregarded this hadith because the man from Juhaynah was not known.

Although some of the above ahādith were questioned by the muhaddithūn, there is still good evidence that the kharaji system is one for which basic guidance and approval are to be found in the traditions of the Prophet and his Companions. Scholars of hadith literature dispute only those ahāith in which entering into kharāj land by a Muslim is discussed.

1. Text P. 12
2.Text P. 15

But, as a whole scholars are unanimously agreed that the origin of the kharai system is to be found long before its introduction by `Umar. As a result of the dismissal by the muhaddithūn of those ahādith which said that the Prophet and his Companions disapproved the entering of a Musim into kharāi land, $A b \bar{u}$ Hanífah and many other jurists say that there is no harm in a Muslim entering into kharāj land because kharāi in itself is a system which was approved by the Prophet. Therefore once kharāj is levied, Muslims will also be liable to pay it if they become custodians of such land. Muslim jurists are agreed that Muslims and non-Muslims are equal in business transactions.

### 3.4 The First Introduction of Hharaij

Kharā̀ existed as a system in the Sawād in Iraq before Islam. Hasan b. Sāiln says that the Sawād of Küfa was in the hands of Nabatis. It was taken over by Persia and the inhabitants paid kharāi to the Persians.

When the Muslims defeated the Persians, they left the Sawad in the hands of those Nabatis that did not fight them. They imposed jizyah on them and left this land in their hands, also imposing kharäj on this land. Land which were not in their hands were transformed into state property. 1 Abü al-Husayn Ishāq b. Yahyā b. Shurayh describes the situation thus: In the old days, Sawād was on a crop sharing (muqāsamah) basis. It was qubädhb. Firuz who changed it from muqäsamah to kharāj.

This was because one day when he was hunting he became separated from his people. He then saw a woman preparing bread and her boy was with her. Whenever the boy tried to pick some fruit from the tree nearby, the woman would stop her work and go to stop her son. Qubädhcalled her and asked her why she stopped her son from eating the fruit. She replied that the fruit was shared with the king and that the king's people had not yet arrived to take their share. Qubādhwas very moved by this and he ordered that the system should be changed from crop sharing to kharaj, so that the people would be free to consume what they produced. 1 This system continued until in the time of 'Umar, the Muslims occupied the whole of the Sawād. At first, 'Umar wanted to distribute this land to the Muslim soldiers who took part in its occupation, but 'Al $\bar{i}$, 'Uthmān b. Haníf and Mu’ädh argued against this, saying that vast properties would be under the control of the Muslims of that time but that the future Muslims would have nothing for their use. 'Umar then changed his mind, left the properties in the hands of its previous owners and imposed kharāj upon it. 'Abd Allāh b. Qays al-Hamdān̄̄ said that 'Umar made these lands the equivalent of waqf land at the suggestions of Mu‘adh b. al-Jabal. ${ }^{2}$ This means that he left it as fay' for the Muslims and imposed kharai on it.

After conquering the Sawād, 'Umar offered the choice to its inhabitants of accepting Islām or paying jizyah. They chose

2. Text P. 20
jizyah. Therefore 'Umar allowed them to keep their lands on payment of kharāi and imposed jizyah on them.' Yahyā: b. Ādam quotes a hadith in his Kitāb al-kharāi in which it is said that Ibn al-Rufayl and other leaders of the Sawād came to - Umar and said that they were subjected to many atrocities by the Persian people after they had conquered their territory. Therefore initially when they heard of the arrival of the Muslims they rejoiced and did not resist the Muslim advance. But soon after, they became apprehensive as they had heard rumours that the Muslims were planning to take them as slaves and so went to inquire of 'Umar about his intentions. 'Umar gave them two options: either become Muslims or pay iizyah. They accepted jizyah.

There is a report from Tähā b. Musrif in which he says that 'Umar was about to divide the Sawād amongst the people of Küfa by giving each of them three fallāh, but was dissuaded by 'Alī who advised him not to do so but to hold on to it for future Muslims, which 'Umar then did.

Zayd b. Aslam narrated from his father who had heard 'Umar say that if the case had not been such that the future Muslims would have nothing, then he would have distributed any captured lands amongst the fighting forces, as had been done by the Prophet in the case of Khaybar. 2 Therefore 'Umar did not allow the conquered lands to be distributed and instead imposed kharāi on the Sawād. This system continued up to the

1. Yabya b. Ādam: Kitāb al-kbarāj text p. 22
2. Sanin al-8ukhariv text p. 23
time of the Banüat-Abbäs. al-Mansūr changed the system and restored the Sawād to a mugāsamah system. His son al-Mahdī continued this after him.

### 3.5 Kharāi and Non-kharāi Lands

 Lands either belong to Muslims or non-Muslims. Muslim owned lands are of two kinds: Firstly, lands which are owned by an individual and secondly, lands which are the Muslims' public domain.
### 3.5.1 Land Individually Owned by a Muslim

If this ownership has been aquired by cultivating waste land, or if the owners have accepted Isläm and there has been no kharāj imposed on it previously or the land has been aquired in the distribution of booty by an Imäm, then it will not have kharaij on it as it is solely under the ownership of Muslims ${ }^{1}$. This principle is accepted by most of the jurists, but there are differences of opinion regarding the details, especially regarding the continuation of kharāi once a Muslim takes over kharāi land.

There are two reports about the opinions of Ahmad. The general view is that Ahmad accepted the above principle but there is a report from Hanbal that Ahmad said that if a person possessing land accepts Islām, then he retains ownership of the land but he must pay kharāi upon it. Abü Ya'lā expounded
upon this by saying that Ahmad's view concerns land which has kharāi already imposed on it and so there is no inconsistency with the view of the general jurists.

The second report states that Ahmad said the lands held by peace treaty are kharäj lands. He explained that if a man accepts Islàm and makes an agreement concerning his land that it shall remain under his ownership, then it has kharāj on it. Harb replies to this by saying that this report is incorrect because once he accepts Islàm and makes an agreement concerning his land, the land becomes ushr land (he claims that Ahmad himself told him this). Harb also said that there is a report from Ahmad that he gave a fatwä to the effect that if a person accepts Islàm without a fight his land becomes ushr land, for example al-Madinah and Makkah.

## Contradictions of Ahmad

Ibn Harb and Ya‘qüb b. Bakhtän report that Ahmad said that if a man accepts Islam while he is the owner of some land, he must pay ushr. This is again a contradiction of the agreed principle that if a person embraces Isläm of his or her own free will, then his or her land would be kharaj land. This contradiction can be explained if we assume that by the words 'he is the owner of some land ' Ahmad means some land with kharäj imposed on it already. ${ }^{1}$

The Hanaf $\vec{i}$ school of thought says that the imposition of kharāi depends on the water which is used to irrigate the land
lands and conquered lands．
Public estates of the Muslims fall under two categories：fay＇ 3－6 Division Of Public Estates which will follow．
suotssnostp ə⿰丬士 ut dn pexeəts əq ITTM 7t pue sxetoyos fo smeṭs of Shurayk was not in accordance with the generally agreed or price for the land and not as humiliation．This version
which were under Muslim control，kharāj was levied as a rent
 jizyah as their owners were not Muslims．Kharāi was imposed case．The kharāi imposed on such land was on the principle of



condition of kharāi payment．This is disputed by other would be only on land held by treaty which was concluded on Yahyā b．Ādam reports from Shurayk as saying that kharāj

 land．This public domain will have kharäj on it，regardless The second category of Muslim land is the Muslims public 3．5．2 The Muslims＇Public Land liable to ushr． also be liable to kharāi，otherwise a Muslim＇s lands are land which has kharāi on it，then the land in question would
and not on the land itself．If the irrigation water is from
3.6.1 Fay' Land:

Fay' land is land which has not been associated with the ownership of a particular Muslim from the beginning. For instance (i) land from which non-Muslims have fled and which has been captured by Muslims without fighting (ii) the land of a non-Muslim who has died and left no heir. This is fay' land according to al-Shīfi’ $\bar{i}$ and $A b \bar{u}$ Hanifah. But they both said that it should be used for a particular social benefit. Malik and Nakhi $\bar{i}$ said that this land and its wealth should be used for the benefit ofits own religious people.

Therefore land and its contents which fall into the hands of a conquering Musim army, without actual warfare, remain the property of the state for the benefit of the entire community. The Qur'anic prescription concerning this is in the verse :
'And whatever Allah has given to the Prophet, for the acquisition of which you have not used horses or camels, but Allah giveth power to His Prophet over whomsoever he wishes and Allah has power over everything. Such property of the inhabitants of the village which Allah bestows upon the Prophet as fay', is for the benefit of Allah and his Prophet and for relatives and orphans and the poor and the wayfarers so that it may not circulate amongst the wealthy of you...' (59:6-7)

After the death of the Prophet, the above statement was interpreted as denoting the good of the entire community since the Prophet in his lifetime made use of fay' property
for the good of the poor, orphans, etc. Moreover since wealth should not be circulated amongst the wealthy only, the best use of fay' property was for the general good of the entire community. This recieved general concurrence amongst the Companions of the Prophet. According to this view, the rights of the relatives of the Prophet automatically ceased after his death.

### 3.6.2 fay' land and Hagf

Opinions are divided as to whether or not fay' land becomes wagf once they come under Muslim control. al-Shäfi'i says that fay' land is subject to khums: once land comes under Muslim occupation after the deduction of a fifth the rest automatically becomes wagf property. But his followers are divided in their opinion on the following two points. One is that al-Shāfi" $\bar{i}$ held the view that fay' property was for the public good. On this basis fay' land becomes waqf property. However since he also held the view that this land was for the benefit of those who were engaged in. . fighting, they say that fay' land should be distributed amongst the fighters, so it does not become wagf property.

Another group of al-Shäfi"i'sfollowers say that fay' land is waqf land. They deal with the problem in the following way. The meaning of 'Fay' land should be for the general good of the community' is that the produce of the land should be used for the good of the people. On the second point, they say that the meaning of fay' land being for the fighters is that the produce of the land should be used for the good of the
fighters.' There are two reports from Ahmad regarding fay' land as to whether it automatically becomes wagf when its owners leave, or whether it needs the declaration of the Imäm. The first, reported by $s \bar{a} l i h$ and $A b \bar{u}$ al-Hārith says that all land of which the owners have fled without fighting is fay' land. The second report, narrated by al-Marwazi, is that Ahmad said that when there is no owner of a piece of land then this land becomes 'dead' land. If there appears to be an owner, then it becomes fay' land.

Abū Ya`lā says that fay' means waqf and thus it will come into the general ownership of the Muslims. Those who say that fay' land does not become wagf until it is declared so by the Imam mean that before it has been declared wagf it is similar to a movable property. But land which the Imām has taken into the Bayt al-mā becomes permanent waqf.

Yahyā b. Ādam reported from Hasan b. Sālin that the status of all such lands is at the discretion of the Imä. He is at liberty to appoint someone to cultivate it on the basis of the sharing of production or if he wishes he can employ someone at public expense and the income forms part of the public revenue. In support of this he reports that 'Umar approved this system ${ }^{2}$ in the hadith of $A b \bar{u}$ Hanzalah from Sa`d, who narrated that 'Umar authorised him to distribute or to make wagf a land which was captured without a fight.

Hasan reported from Ya’lā b. Umayyah that 'Umar put him in charge of Najrān and ordered him that whatever land he conquered from which the inhabitants had fled, he must hand it over to the people who would work on it. If the irrigation was by natural water, he could keep a third and the other two thirds would be for the Muslims. If it was irrigated by some other method, then he should have two thirds and the remaining third should be for the Muslims. ${ }^{1}$

## 3-7 anwah Land

A second kind of public land is land which has been captured by force. This type of land is called anwah land. Regarding this land we can summarise three opinions of the jurists:
i. One fifth of the land should be separated for the state. The rest should be distributed amongst the fighting forces. This is the view of al-Shafi’i. The report that Zubayr demanded that Egypt should be distributed and that Bilā demanded the distribution of Syria strengthens this opinion. But the opponents of it argue that although this demand indicates that distribution was legal, it does not imply that it was obligatory. Therefore when 'Umar refused distribution, no one raised any objections, nor did anyone say that nondistribution was illegal according to the book of God.
2. When the land is captured it becomes fay' land for the

Muslims and is not to be distributed amongst the victorious forces. This view was supported by $M \bar{I} i k$ and also by one opinion of Ahmad. 'Umar adopted this principle during his time. al-Hasan al-Bascrí, 'Aṭ̄', Shurayk and Yahyā b. Ādam were advocates of this, but Yahyä b. Ädam said that the final decision was the Imäm's. If he decides to distribute the land amongst the forces he is at liberty to do so and his decision is lawful according to the the Shari’ah.
3. It is for the Imäm to decide the status of this land. It is his decision whether the land is distributed or whether it is retained as land for the general use of the Muslims. This view was adopted by $A b \bar{u}$ Hanifah and many others including Thawrí, Ibn al-Mubärak etc.

### 3.7.1 Differences Regarding The Administrative <br> Powers of The Imam

There are differences of opinion among the advocates of this third opinion, regarding the discretion of the Imām.
(a) One group says he is free either to distribute the land or to declare it wagf. But this group differs from the others on the point of taking the khums.
(b) A second group says that he is free to distribute it or to allow its owners to keep it on imposition of kharäj and jizyah. They say that he has no option of waqf. This is the opinion of Abu Hanifah, etc.
(c) The third group says that the Imam must choose one of four options: waqf, distribution, leaving its owners on the payment of kharāj or jizyah or expelling its owners and bringing in some other people. This is supported by the followers of Ibn Hanbal.

The three groups differ on whether the imposition of kharāi should be on all janwah land or not. One group says that all ’anwah land should be subject to kharāi including Makkah ${ }^{1}$, whereas others are of the opinion that there should be no kharāj on the land of Makkah as the Prophet did not impose kharāj on them. Moreover it is also said that Makkah and the Arab lands should be exempt from kharāj as there is no jizyah on their inhabitants. If it is said that kharaj means uirah, then the house of Allah in Makkah could not be let out at rent. $A b \bar{u} Y a \times \bar{a}$, mentioned that this is not limited to the house only: none of the land within the boundary of the Haram may be sold or let out on rent.

### 3.7.2 Principles for 'anwah Land

To understand the various conditions of janwah land we have to consider the following three points.

Whelther

1. 'anwah land is included in Āyat al-ghanimah or in Āyat alfay'.
2. The case of Rhaybar, whether the Prophet distributed it or
left it undistributed.
3. What action 'Umar took on the land of the Sawad.
3.7.3 The First Point:

On the first point we have to note the Qur'anic commands ${ }^{1}$ :
'And know that out of all the booty that ye may aquire, a fifth is assigned to God and to the Apostle and to near relatives, orphans, the needy and the wayfarer ...' (8:41)

A group of jurists argue that anwah land is included in this verse, because the qur'ān says Anna mă ghanimtum min shay'in. The word shay' includes everything, including 'anwah land. This group says that this sort of land should be distributed among the fighting forces. A second group of jurists say that the above verse includes everything except anwah land, because of another verse in the Qur'än which specifies the status of lands captured by the Muslims; this is known as Āyat al-Fay': 'What God has bestowed on his Apostle (and taken away) from the people of the townships ... most merciful.'(59:7-10)

According to this verse the land should be for the use of three categories: the Muhājirūn, the Anṣār and those who came after them. 'Umar said that this verse referred to every Muslim, including all those that should come afterwards. Therefore all Muslims have rights with regard to fay' property. Not only that, 'Umar practically decreed ’anwah to be fay' and designated 'anwah land for the general use of the

Muslims until the last day. This action of 'Umar proves that he included 'anwah lands in āyat al-fay' and not in āyat alghanimah. ‘Umar b. ‘Abd al-`Aziz accepted this decision of 'Umar as correct in his book Ahkām al-Fay'. ${ }^{2}$ This was supported by al-Bukhāri. He said that these verses were not intended to apply to the Banu al-Nadir only, who were forced to leave their lands and to take with them only a camel-load of goods. ${ }^{3}$

As mentioned above ${ }_{n}^{a l}$ Zuhri $\bar{i}$ rejects what was accepted by 'Umar b. `Abd al-`Aziz and al-Bukhäri. He argues that this applies only to the Banu Nadir, whose property Allah gave into the hands of the Prophet and his followers. This was given to the Prophet as a special gift. Allah stated clearly: 'For this You made no expedition with either cavalry or camelry...'. The Prophet gave most of it to the deserving among the Muhajirün and the Anș̄ar and kept the rest for his own sadagah, which was in the hands of the Ban̄̄ Fātimah.

There is evidence in al-Bukharī and Muslim that this property was given by Allah specially to his Prophet. The Prophet used to spend the income on his family expenses throughout the Year; whatever was left over was spent on military needs ${ }^{4}$. From this it is clear that fay' land was especially for the

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1. Abĭ Dëvüd,
Text P.41
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3. Ab\vec{u}\cdotubayd and Ab\vec{u}}D\vec{a}w\vec{u}d
Text P.42
4.Text P.43,45
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Prophet during his lifetime, and that he was authorised to distribute them as he wished. This is in contrast to the principle of ghanimah.

It is also clear that the Banū Nadir did not surrender voluntarily. They were surrounded; after a battle they sealed themselves into a fort and gave up only when they saw that there was no alternative but to die or surrender.

The land occupied subsequently is to be seen as a gift of Allah; this gift is mentioned in āyat al-fay'. So, all 'anwah land should be covered by the regulations mentioned in âyat al-fay'. We have the practical action of the Prophet as a model. He was given authority over this sort of property. After his death the Imām takes his place; all anwah land and fay' land is at his disposal; he should use them for the benefit of the whole Ummah. As the Prophet was allowed to take his annual expenses out of the income, the Imam is entitled to receive a salary or allowance, but the rest he should use for : defence and for social security.

Reply to the Arguments of the First Opinion:
Those who say that anwah land should be subject to the regulations mentioned in äyat al-ghanimah use as their main argument that the word shay' mentioned in the verse is indefinite. Therefore, it applies to everything including 'anwah lands. To rebut this interpretation, the advocates of the second opinion, say:-
movable items.On the other hand, the people of Muhammad were these comprising ghanimah. This is why they used to burn Ghanimah. Movable items were forbidden to the Banu Isra'ī, allowed to them. This means that land is not included within of non-Muslims to the Banū Isra'ī, whereas ghanimah was not 1. In the Qur'an it is said that Allah gave ownership of land : s7uวunñxe

They put forward the following points in support of their
excluded from it.
gift is limited to movable items only. Therefore land is special gift Allah granted the Muslim ummah and this special land is excluded from the ayat al-ghanimah. Booty is a into the hands of the Muslims as a result of it. Therefore Badr, only movable items were mentioned, because no land came
3.- Alternatively, it could be said that, at the Battle of
the first reply is the more appropriate.
after the battle of the Banu Nadir. $A b \bar{u}$ al-Faraj says that after the battle of Badr and āyat al-fay' was revealed later näsikh for the āyat al-ghanimah; $\overline{\text { äyat }}$ al-ghanīmah was revealed 2.- Alternatively, it could be said that āyat al-fay' is principle of Islamic law. •amm has been made khāss which is a commonly accepted excluded by another verse, i.e. āyat al-fay. This means that
1.- The word shay' in āyat al-ghanimah is general but land is
movable items, such as land. They were there to fight for Allah and not for the booty. Allah blessed them with things which have no durability like land.
2. In the Qur'än it is said : 'What God has bestowed on His Apostle from them...'(59:7)

This verse states that fay' is for the Prophet and not for those who are to receive ghanimah. Thus, this sentence is associated with land only. The Imam is in the place of the Prophet and so he is authorised to deal with this land according to his best judgement.
3. According to 'Aț̄'b. Sā'ib and al-Hasan al-Basrī land becomes fay' regardless of whether it has been captured as a result of fighting or not. As discussed before, fay' is for the Muhäjirūn, the Ansār and for those who are to come in the future. This can only apply to land; movable items are not durable enough to be guaranteed to future generations:

Regarding the ayat al-fay', we find the following different views as to what it relates to:

1. Some experts say that ayat al-fay' was revealed in respect of that which was given to the Prophet by Allah as the result of battle, and others say it was revealed in connection with the Banū Qurayzah, Banū Nadī and Hunayn. They also say that the verse applies further to all the lands which fall into the hands of the Muslims until the end of the World.
2. Mu`ammari says: we have been informed that this verse was revealed concerning the jizyah and kharäi on lands. ${ }^{2}$
3. According to Hasan b. Sälih, fay' is what is taken from non-Muslims in the form of jizyah and kharāj as a result of peace agreements.

A similar view is expressed by Ahmad. He says that all Muslims have rights in fay', because, in the āyat al-fay', there is no mention of ījaf (using force) which is found in the previous verse.

To summarise this analysis we conclude that there are three different views regarding the āyat al-fay'.
(i) The prescription of this ayah is abrogated.
(ii) It refers to one fifth of the booty.
(iii) It refers to land only.

According to Abu al-Faraj this third view is the most plausible, because the word fay' has generally been used for property captured by force.

Ibrahim b. Tahman reports that $K$ haybar was $\mathfrak{f}$ fay'. Yahyä b. Sayyid reports from Bishr b. Yasär that the Prophet distributed Khaybar into thirty-six shares.

1. Text P. 51
2. Ibn Abi agtim. Text P.48

Conclusion
Those who say that land is included in the āyat al-ghanimah, say that it is obligatory to distribute the land amongst fighters.
Those who say that land is included in the ayat al-fay' are of two opinions: (i) land should be for the Muslims in general - Mälik agrees with this (ii) it is at the discretion of the Imäm either to keep it for the Muslims in general or to distribute it among the army. This view is supported by the majority of Islamic scholars.
$A b \bar{u}$ 'Ubayd says that in the opinion of the Companions of the Prophet land is included in both the verses. Mälik rejects this view saying that if land is included in the ayat alghanimah, then the Imäm will have no choice but to distribute the land between those who made the battle victorious.

A group of scholars say that those who were in favour of the distribution of the land, like zubayr and Bilal, were not so because it was included in the $\overline{\text { äyat al-ghanimah but for }}$ another reason. They say that land is fay' for all Muslims. So, those who fought were also included in the generalatity of Muslims, and so it could be divided among them. They should however have priority over other Muslims, as they had fought for the victory. It is for this reason that the occupied land should be distributed amongst them.

To support their arguments, this group said that 'Uthman decreed ownership of some of the lands of the sawäd among the Companions of the prophet. Ibn 'Aqīi, some Shāfi’ites and $A b \bar{u}$ Hanifah gave their rulings that it would be perfectly lawful to give some of the land of the public treasury as wagf to certain Muslims.
3.7.4 The Second Point: The case of Khaybar
(a) A group of scholars are of the opinion that the lands of Khaybar were distributed among the people of al-Kudaybiyah, those who were present in Rhaybar and those who were absent; all were included in the distribution ${ }^{1}$ They argue that:
(i) 'Umar said: if the question of the future generations was not ( in my mind ), any village I occupied I would distribute it in the same way as the Prophet distributed Khaybar.
(ii) Ibn Wahb in his Musnad mentions thatalZubayr b: al-Awwam demanded of Mmar b. al-’As that he should distribute Egypt as the Prophet distributed Khaybar.
(i三i) Abū Ishāq ai-Fazarī reports in Rīn̄bal-sivar that when Syria was captured, the people, including Biläl and Mu’ādh, wrote to 'Umar b. al-Khattāb asking him to distribute it as the Prophet distributed Khaybar.
(b) Another group, including Tahāwi, say nothing about

Khaybar's being distributed during the Prophet's time. It was distributed during the time of 'Umar. During the Prophet's time only produce from it was distributed.1
(c) Another group say that the Prophet distributed some of Khaybar and Ieft some undistributed. This is the most popular view. This group presents Abū Dāwūd's hadith as evidence for this opinion. In the hadith 'Umar said that the Prophet divided Khaybar into three shares. Two shares were kept for the Musims in general and one for the expenses of his family. All surplus funds were spent among the poor and needy. Another hadith of $A b \bar{u}$ Dāwūd suggests that the Prophet divided Khaybar into two parts. One part was for his own necessities and the second part was for the welfare of the MusIims in generaI.

### 3.7.5 Thaybar and Ahl al-Hudaybiyah

As discussed above, Khaybar was distributed among those who were present at the Hudaybiyah treaty. Now the question remains as to whether anyone from Hudaybiyah was absent at Khaybar. Zubayr and Ibn Ishäq say that some of the people of Hudaybiyah were absent but they still received their share of Khaybari. Müsā b. "Uqqbah however, says that none of the people of Hudaybiyah were absent. from Khaybar.

Non-Hudaibiyan people who took part in Khaybar:- There are two

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1. Text p.gs
2. Isma·Il: KIt\vec{ab al-AMwal Text P.je}
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different opinions regarding this.
Ibn Ishäq says that Khaybar was distributed among all those who attended Hudaybiyah. Most of the hadith suggest that Khaybar was distributed to Ahl al-Hudaybiyah. A hadith is reported in Bukhārí strongly supporting this view. It says that 'Umar, after the eviction of the Jews from Khaybar, invited all those who were to share in Khaybar. Then he distributed it among those who took part in Hudaybiyah. This suggests that those who did not take part at Hudaybiyah did not receive anything. But this view is contradicted by the report that the Prophet himself gave shares to some who came after the victory. Abū Mūs̄ and Abü Hurayrah with their companions joined afterwards and received a share of Khaybar.

One account claims that the Prophet gave it with the consent of the original share holders². Another possibility is that the Prophet gave them the fifth share belonging to the state and did not diminish the shares of the fighting forces.

## 3.T.6 Khaybar: All taken by force or some by treaty?

According to Muslim andalBukharī, all of Khaybar was taken over by force. A similar report is narrated by a hadith of abü Dāwūd. But in another report of $A b \bar{u}$ D $\bar{a} w \bar{u} d$, it is said that some of Khaybar was annexed as the result of a treaty. Isma'iI says that the part of Khaybar occupied without a fight was analogous to the land of the Banu Nadir.

Those who are of the opinion that all of Khaybar was distributed, use this as evidence that all occupied lands should be distributed.

Those who say that the Prophet did not distribute any part of Khaybar use this as evidence that occupied lands should be reserved for the Muslims in general and should not be distributed. The question now arises that if this was the case, why did 'Umar distribute Khaybar. In reply it is said that Khaybar is an Arab Iand, and no non-Muslim is allowed to Iive on Arab lands. So it cannot: be kharäi Iand. After the eviction of the Jews only Muslims were Ieft. It is because of this that Umar distributed Khaybar, so that everyone could cultivate their share.

Those who say that some parts of Khaybar were distributed and that others were not argue that both of these actions are IawfuI. Ibin Jarir says that the part which was distributed was captured as anwah and the part which was not distributed was captured as the result of a treaty; thus onIy anwah Iand can be distributed and sulh can not.

Isma'il and some other scholars say that the distribution of Khaybar was a speciaI event which should not be taken as evidence for the distribution of fay' land, because this was distributed among AhI al-Hudaybiyah only. The other group reply that this reasoning was invalid, as all of Hudaybiyah attended Khaybar and so it is not a special ease but a genéral case, which can be used as evidence for other lands.
3.7.7 Third Point: The practice of 'Umar concerning ’anwah land captured during his time

- Umar did not distribute conquered land amongst the victorious forces. There are differing views as to why he did not do so.

1. One group says that 'Umar declared it to be fay' land. Therefore he did not distribute it. This is a popular view among scholars; Mālik, Sufyän and Ahmad favour it. Bilāl demanded the distribution of such land but `Umar refused, saying that it was real estate and should be kept for future generations.

Later, when 'Uthmän became khalīfah he maintained the system of 'Umar, but he gave some of the sawād as igtä' to certain Companions of the Prophet.
'Ali also maintained the same system. He declared that the question of distribution was in the hands of the Imām. If he felt it appropriate, he could either distribute it or not'.
2. Another group of jurists say that Umar made this land wagf land, and he made it fay' land with the consent of the participants in the war. Those who refused to give consent were given compensation. [This implies that the Imām can acquire any land he thinks necessary for the benefit of the community. As private ownership is approved of in Islamic Law, however, the ruler has no right to acquire such lands without paying proper compensation.] These scholars argue that Abü

Häzim reported that 'Umar repossessed the land of Jarir for eighty Dinars. Qays reported that 'Umar made the land of Umm Karz as fay' by paying eighty Dinars.

The opponents of this view reply to the above two points: by saying that 'Umar gave Jarir and his people this Iand as a nafi and not by right of ghanimah. Therefore, it was necessary to pay compensation when he wanted the land back. Abü 'Ubayd reported fromasha'bi' that when 'Umar sent Jarir to Kífa, he gave him a third of the Iand remaining after the deduction of the khums. Ibn Mundhir rejected the report ofalsha'bi as unacceptable, sinceashab' $\vec{i}$ did not hear directly from "Umar; thus his report does not carry equal vaiue to the muttasil report.

Conclusion: The case of Jarir indicates that distribution is not obligatory, because "Umar did not distribute the rest of the Sawad. This implies that if ownership is not conferred no one has any right or claim to the land.
3. Another group say that land which was not distributed by 'Umar was not janwah Iand but fay' land. That is why he did not distribute it. He did however, return some of it to its previous occupants, on the basis that they should pay kharäi on the Iand and they would pay iizyah on their persons. On this basis they became the owners of the Iand. This implies that if any individual person occupies any Iand from a Musiim government on payment of khar $\overline{3}$, he becomes the lawful owner
of this land. He becomes the owner subject to the payment of kharāi, because the real owner is the Muslim state. Abū Hanifah favours this view. The Imām has discretionary powers to return the land to its previous owners, as was done by the Prophet to the inhabitants of Makkah. The only difference is that the Imam should give it subject to kharāi on the Iand, and iizyah on the owners' heads, if they are Iiable to iizrah.

3-8 Kharait Land in the hands of Non-Musinims This kind of Iand is of two categories.

### 3.8.I Eirst Category of the Treatr Land

If non-MusIims make a treaty with the MusIims on the terms of their Iands passing into MusIim ownership and the MusIims returning it to them for their use, conditionally upon the payment of kharāi, the general view of the Hanbalites is that this type of land becomes wagf immediately upon the assumption of ownership by the Muslims. Jizyah is automatically payable.

Other scholars hold the view that the choice lies with the Imam, exactiy as in the case of $\mathfrak{a}$ anwah land. Abū Ya'Iā says that if a person embraces IsIà, after the imposition of kharāi, he will still have to pay kharāi, now in the form of rent, from which MusIims are not exempt.
Both Abū Ya’la and Abū al-Khatt̄̄ab say that this land becomes

Hanbal reports Ahmad as saying that whatever is captured by force is fay' for the Muslims in general. In the case of land acquired by agreement, the terms agreed on should remain in force, except that if a non-Muslim occupant accepts Islam, he ceases to pay jizyah. The Iand becomes waqf, and the occupant must continue to pay kharäi.

Ibn 'Aqī, however, reports that Ahmad said that kharāi is remitted on acceptance of IsIäm.
3.8.2 Second Category of the Treaty Land If the non-MusIims of a particular area enter into treaty with the Muslims, their Iands remain under their ownership. As long as the non-Muslims remain in kufr, they continue to pay whatever tribute was arranged at the time of the concluding of the treaty. Since the land remains part of pā aI-kufs, the tribute is not designated iizrah. This is the opinion of the HanbaIites, Mälikites and Shāfi’ites.
 the land of treaty will become Dār al-Islam. This land will be similar to anwah land, which the Imam gives back to its owners, subject to the payment of kharāi.

1. Ibn •Aqī: M-radnkirah Text po.. 79 !

If these people accept Islām later, the Hanafī principle is that they no longer pay iizyah but have to pay kharäi as before. This is the same as in the case. of anwah land.

Harb, reports Ahmad as saying that after a non-Muslim's acceptance of Isläm, he should pay nothing on the basis of the terms of the treaty. The land now becomes ushr land.

There is another contradictory version reported from Ahmad by Ibn Aqil stating that kharāi continues to be payable after acceptance of Isläm; this he bases on Buraydah's report that the Prophet said: The Ahl al-Dhimmah shall pay what they paid at. the time when they accepted IsIame.
3.9 Kharäi Land and the Practice of 'Unar Whilst it is beyond doubt that 'Umar imposed kharāj on the Sawäd of Iraq, there is a dispute among Islamic scholars as regards Egypt; whether it was conquered by force or by treaty. It is an established fact that Umar imposed kharäj on all forcibly conquered lands. $a l-\bar{A} m i d \bar{i}$ and his followers say that Egypt was occupied by treaty. $A b \bar{u}$ 'Umar says ${ }^{3}$ that the Sawäd, Syria and Egypt were all occupied by force and 'Umar imposed kharaj on them all.

1. Text P.81
2. Text P.81
3. Text P. 108

It is reported by ’Atiyyah b. Qays that certain people applied to 'Umar for some Andarkaysaniterritory so that they could graze their horses and 'Umar gave it to them. But, instead of using it for this purpose they cultivated it and so latery 'Umar repossessed it and charged them for their use of it. This indicates: that Syria was fay' Iand; if it had been a Iand of treaty, ‘Umar would not have retaken it nor would there have been a case for the people to submit an application for its use Abū 'Ubayd says that Egypt was initially a Iand of treaty but because the treaty was later broken, it had to be recaptured by force. Thus Egypt was both treaty and anwah Ianc. aI-Jurjani, of the shāfi’i madhhab, says that there is no difference of opinion concerning the IawfuIness of the sale of kharāi Iand in Syria, due to the fact that it was not paqf Iand. This view is not accepted by many scholars. There are reports from 'Umar which indicate that the Iand of Syria was forcibly conquered. Abū "Ubayd said that the cities of Syria were captured by treaty but their suburbs were captured by force. Now the question arises as to the status of the surrounding land if Muslim soldiers should besiege a city and occupy its surroundings and then the city comes into Musim hands as a result of treaty. Abū Ya'Ī̄ says that in such a case the surroundings would be owned by the soldiers. According to him this was the view of al-Shafi’i. He quotes a hadith of Ibn "Umar in support' in which it is said that the Prophet fought the people of Rhaybar, captured their trees
and lands and besieged. them until finally they made a treaty. This hadith also reports that the prophet approved the ownership of the occupied Iands by the soldiers. Ibn Taymiyyah differed from this view, arguing that the occupation cannot be complete until the cities have fallen to the Musims. Therefore the surroundings will be under the same conditions as the city. He cited the example of the actions of the Prophet in Täif and in the lands of the Banu Nadir which were besieged by the Muslims and the surroundings occupied before the occupation of the city by treaty. The Prophet made aII these lands fay' and did not distribute any part to the fighting forces. The Hambali principle is different to the above view. They say that when the people of an area surrender for fear of their Iives, then their Iand shouId be treated as ghanimah. This means that the whole of the area should be in the same category. But if there is a clause in the treaty that the Iand shaII remain under their ownership, then this should be honoured.

## 3-10 Ownership of Conquered Inands

Abū Hanifah, Sufyān and thein supporters are of the opinion that 'Umar gave the occupants the ownership of the land with kharāi. Therefore the status of these lands is similar to that of treaty Iands.

But al-Shāfi'ī and Malik say that such conquered lands are fay' and so are not owned by the occupants. Some of the scholars say this will be wacf land and 'Umar made it wacf on Muslims.

3-11 Proceeds of kharaii
3.11.1 General Outline

Kharäj is levied on an area of land in a similar way to jizyah which is levied on a person. The position of the person responsible for paying kharāi will be like that of a creditor who is bound to repay his debt. This is the opinion of Ahmad and Ishäq. There is a report from 'Umar b. 'Abd al-`Aziz that' kharāj and ushr could both be levied because kharäj is ujrah of the land and ushr is obligatory on produce and harvest. This view is disputed by \(A b \bar{u}\) Hanifah and a group of the people of Küfa. They report that 'Ikramah said that there should be no ushr with kharäj. They even say that if the harvest is destroyed by some natural disaster, then they are not required to pay kharāj because, according to them, kharäj is related to the produce. Hanbalites, on the other hand, dispute this view and say that 'Ikramah was probably only referring to the case of dhimmis. As 'ushr is levied only on Muslims; 'Ikramah said that ushr should not be levied on the non-Muslims. The Hanafites quote a tradition of the Prophet in support of their argument: that the Prophet said that kharāj and ushr should not both be levied on a Muslim. This tradition was reported by 'Abd Alläh. But the Hanbalites raise doubts as to the authenticity of this hadith and say that it comes from Yahyā b. 'Anbasah, who is known to be a weak narrator. They put forward in support of their argument the claim that 'Umar b. 'Abd al-́Azīz ordered 'Abd Allāh b. 'Awf al-Khananī to collect both 'ushr and kharāj from Ibrahim b. Ab \(\bar{i}\) `Aylah.
3.11.2 To Collect kharāi: Is it the Duty of The Imam? According to the Hanbalites it is not obligatory upon the Imam to collect kharāj. He has the authority to exempt someone from the payment of kharāj. Maymūn $\vec{i}$ reports that Ahmad approved of this opinion and this is the opinion of Abū Yusuf as well. But Muhammad b. al-Hasan and Ishäq b. Rāhiwiyyah claim that the Imám does not have the authority to give exemption because kharäj is the same as 'ushr, which is a form of zakăh, and thus an act of ’ibädah. But $A b \bar{u}$ Ya'I $\bar{a}$ and others differ from this view, because they say that zakāh and kharāj are two different things. Kharāj is a duty and responsibility of the person in posession of land whilst zakāh is wājib on $a$ person's wealth and so it will not be relinquished on any amount given on loan. Other scholars give different reasons for the difference between the two: some say zakā is 'ibādah, which is why it needs intention. On the other hand kharaji is the right of the public treasury. Therefore the Imām is empowered to give exemption if he finds it necessary depending on the particular case. Also zakah is to be given to someone on the tamlik basis, which is contrary to fay' because fay' should be spent for the benefit of the public. Therefore it will be valid to exempt someone from payment of kharāi.

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ولِستفاد من ملاهسه هنغ 1 ات اهلزفْم اللِيوان


 نانـه يملكها بهجما اتـطاسـه لانهـ انها اخذها بمطاوضة عن عسلـa - وتدتهدراليتانضض


343

انیْ








ر"


342

 الدخصل

 بن تِحوز ثلاستّبُّ d

 لابجوز عنا














 a 1

 1 نا



 ختلغن اقسام :




$$
\begin{aligned}
& \text { ap-: } 11 \\
& a-\text { : : } 2 \leftrightarrow 2 \\
& \text { a P-: بل: } 3
\end{aligned}
$$

$$
339
$$






 -ais

 ان من رت زمانتـه لايِّتنغ سقوط رزفته -



338

 "








 Px : 1 : سِقطط

337


متطحه






العانغنطاء الم(ه -



336







 وضحِلتّا




335









للـوعب -




334
ور







عن هكم الدوتطـاع -
و"



$333$
























 aP - : 2
 4 4 دلايِّر: لا










 بان التُّم حق

انـا هوفيـا اذ'لدبطِالب بـه الעار فـان كلام رحـد انهاهو فُ دوربخفُد كما كان هوينحله










$329$













328
لمن عيع（لحّا

 حمة الעا



 لسن حصل उ،



$a p-a \mid 1$
a ヒル！：リル

327




 رلتانى بانـه بال لا تو'ا غيمرنينين نجاز


 يتّ



326









 هحلبن الحباس - وسشُعن ارجل يكون لـه النلّا


325




 (1)




 $a-: 1$

324
 التّا








 على

323









 ان هنَ

322







 وا

 كِت

321


لـيـّخنة بالماشذ -






حـسِا' فُ 'لجنهـة -

据 :



320













1 1سنيتد : استِّهاء a 2 عـير : 2




التْقّ عن عـه

 على عهـ بِ اد'





$318$













317





 الעآدمين ولايحزب علع اداُهـ -






$$
\begin{aligned}
& \text { P-: : } 1 \\
& 2 \text { عكّنَ : بكيدا ט }
\end{aligned}
$$

316








 رقع بوتـة عن سحب بن عبل الحنَن حلتْ



315

 رلنَّهاه ولد


- نسi

وقدروعع عن عكم مـــه انذه كن لاياحْن سنامن

 ر سقو عن ’!



$$
\begin{aligned}
& \text { P-: } 1
\end{aligned}
$$

$$
\begin{aligned}
& \text { a } 3 \text { نده : } \\
& \text { a P } 4
\end{aligned}
$$

314

فهم مالنَ









 1 د 1

313







 -

1 نيلنى : نيلون P

312


 بت الهار لان ولانُهم البالبيت الهال (ستحتاتا






 كـم بان

تآل هوْ



 تنّنع بالمحتّ 1 لان اعتات 1 - لد ولمعن





11 المحتّ : الحتّت a

نغذ هن! المكَم ولزدهـه لان بن مارن مكـه



 بن







a, $\dot{p}-: 1$


309
ان رضحسه بـتى- فاذا هارت رنــة الارصن








 تّما


$$
\text { ap-1 } 1
$$

$308$













307
-






 عمـا ربنی

-


$$
\begin{aligned}
& a-11 \\
& \text { ap }
\end{aligned}
$$

306

ولكت ليس هذ' السو'ل ذ، 'رُنلحنوة وانضا







اذ1 انمّكت من مسلم لا فـغ لـه - وقننا انمـا



$$
\begin{aligned}
& \text { a } P \text { U1: } 1 \\
& \text { a - : }
\end{aligned}
$$

305

 هبحسع جه!







 و مسوو (1نيسا بو, a 1 a 2 اسحل : المح

304
1


تـال : ولد وقغو


- لستّتوت -








2 وتنو 1 : ونفتا






 1 الوتِف ؟ مذا




a $P-: 1$


302
 فيماتّقْ











301











 a : 1

300



- عنتعا



 للـعصوّ

 1 عليــح لِّرحا


$$
\text { a ر } 1
$$

299
 هـا
遂





保
 a 2 ـغنّن: عشّهة a P- 1 a ن) :

298


 السوور

 ا

عنتمح) ( رِنا فـاحتطحـ





297

 رنمى










296









 رنی النّه تمْما ارضا


295
!! !












294
بن كلام اهمل شايدل على ان حمَ ارمْ الحنوة كها











$293$













292


 كالموات - تَال : ناتطـحما عتُمان رنى النّه عنـه

 نــهح النمَ






291













1د a $P$ Pace

290









 باكِونـة


$$
1 \text { لاحU : x }
$$



289



 عنده - jum وتل




 Pu a $\operatorname{cnt}:{ }^{2}$

288


 عنـ









287













$$
\begin{aligned}
& \text { U } 1 \\
& \text { PU \& : : W } 2
\end{aligned}
$$

286







الحبو- נنْعه -
 الAسtar

الحادل سن 1رن الحنوة عله انما ا رُن نِّع وليست
a $p-: 1$


285










 الــُلاd

$$
a p-: \operatorname{lor} 1
$$

$$
\text { P - : } 2
$$

284
الباب الناسح

 باتسَ !






 - الح山 d

283




 ليحن رذ (睢








282








隹



$$
a-: 1
$$

281
نمها نفن



 اللسستر







280

 سنا










$$
a \text { a } a
$$












 $a-: \operatorname{lb}_{1}$ a د د ap-: 3

278



اتُتُ حِ




 "




$$
\begin{aligned}
& \text { P } \\
& a-\text { - أنِ }
\end{aligned}
$$



 وصحح طالُّتْ
 وسن大م و1بن المنى







1 a المن : السنی a 2

276












a - 1 كتاببة
a 3 الوصايا ! ومـياهُ P وماياها

275












a $P$ - : 1
a or oun 2

274











a 1 U P 2

273






 رحقعم غابت





272


 بُاحن
 اند


 فَ هـن الـبر|ت لاندر ت


271












a - 1 a

270











$a-$ ak 1

$$
269
$$


 - 1 لـ





 وتّ



$$
\begin{aligned}
& \text { Px : 1-1 } \\
& \text { a } 2
\end{aligned}
$$

268











 a P 1

267






 بالتَ




 p-: 2

$$
266
$$

ولو ومى بلره بن 1رغن السوار جاز فان كن












265











 1 a 1

264
 نارددها الهى النبك بن اهلما - فالرحعين و اهل











1 1 1

263
المسْلـة النُّالتَة
رنح ماحب انحماح يل











$$
1 \text { نيّامم : + فاسُله a }
$$


السن هب 1
رؤيتان : تالر ونال هحل 'بن المسن :ان نْتّست



 ان ادنَ !2 على

بــالـ -انتمغه-



1-1

261




 نانـّ



 رسن


260



 '
 فُتِبر يu
 .




259











-


258




 וنقانى $\dot{\text { ו اللا }}$



 و


257

 $-1$





 من ارُن السِ' ر يّيْبلمها بن السلعطان نهلى من
 الحشّا لبد ونِفة رو'ية 'بج' لصفم تاويلان: احلها ان 'احد'رار a P-: : ........ 1-1

256

- رختا رْ على الاحـا








 بن عبل النحن.


255


 $-1$
 ابقدحبّ
 ينَ

- بجو اللاهِارة
















 a $p$ ن宛: 1 a $P$ ع 2 3-3 ردايةحنـلز: ردايته a

253
انـ










 a p 1

252




 اهـ اهِ






251






ر'







250


 عنوة كها دله عليـa كلام
هن 1








249




 - كلل عنوه كنـلـد


 بن.



248





 نيما ول1 الد




 a - : 1
P- :

247
والـجالـت

 نجّد









246












- نلامانح حينتن بن اللاجن

245






 ":



 1
$244$













243








 عـالده
 1


$$
\text { a } 1 \text { עنا : }
$$

242
وهوعـا











a 1
$p a-\vdots a{ }_{2}$

241













$$
\begin{aligned}
& P \text { P + : } 1211 \\
& a-: 1<2
\end{aligned}
$$

240









ان


239









 نـامر|


P 1 $a$ i): $: \dot{i 12}$

238

كلام و1











$$
\text { a } p+a^{1} \text { 1 }
$$

237







نأنادرالحوه -





236




1


التمَا


الزطّة و


$$
\begin{aligned}
& p-: a^{\circ} 1 \\
& 2 \\
& \text { P U }
\end{aligned}
$$

235












234











 $\alpha$ P-: : 1

233
 روگَ







 سطلفـا هاكَ نتنة لا اس

$$
\begin{aligned}
& 1 \text { 1 لتْتُ : ب - } \\
& 2
\end{aligned}
$$

232
 كَ اهسمبن لـا يِا رن دمانُّم و (مصا








P a

231













$$
\begin{aligned}
& \text { a P } 1 \\
& \text { a النا }
\end{aligned}
$$

230













$$
a p-: 1
$$

229

子执

ونـ هن (






$228$













227



والنتا مُ كما و رد





 eلسَم ذلا لا لا



226







طنت




$a p-: 011$
U-: 2
$225$














.





 نٍ








 ا.





222













$$
1
$$

ذه ذـد




 الجـا
 بن




220


 اسلـهـه وها

 نُتّ

 الע سلدم خמرْ
隹 a p 1









 ふ"

$a$ as $p-: 1$

218



 ننس ع جنأِّع وصنأ

استـط حق






 و ذكدعن هيح الفتطان كلا





 1





216






 تاנ سمحـ ا ســات 'بت الـعباح سن رلبالעسُحث





215













$$
\text { a P - : } 1
$$

214










 ليسعو2
$213$













212
وتّ اسنسقاها







 عله حـبه الעهبا عنْ نٌّ 1 لجوض بـطلتا و لما و رالنمْ عن

211









 على عِينّن طن اهم


1
a 1 النّن : الِّح

210


 رنها وتن فانها تنالن الدتن علىمحين لانهذه نوقت
 "له بـ بـنا







$$
\begin{aligned}
& \text { ap }
\end{aligned}
$$

$$
209
$$














208













$$
\text { Px=all } 1
$$














$$
206
$$














205



 عليع وسلم








P $P$ : ap $p$ ir: $\dot{\sim} \forall_{3}$









 ولا ( 1


203




 نلشا ا,




لحـ


202
روايتان وا ذا

 علمهن'


 (هالب عله
 عـهـ وتّن ( ,

a 1 a P-2-2

201








 عليما نحله يل
















(

انغ الا




 K

 فلدنئِ لـ
 ه




 تَّل ديدن القوله جا نَ
 $a P-1$ - 1 -





بل

Lاذ





a 1








 رمـه

 a 1 a 2


 .






















$$
\begin{aligned}
& \text { a P } 1
\end{aligned}
$$

 1
فنكّ

 \&







192


الشٌّ و1
اوُ مهـاسىـ

الها


اوـنـاظط
اون

- عالبا

زن

191






 عi



.تُنا

4
1 وعمّ : צعنغی a a a $\dot{L}_{1}+: a_{2}$ 3 اجلامي: نإجلدهم













 جو "








 a 1












a L : : 1 .
a $P$ a
a
Pa
$a-$ : a
据
 ان بِبَ جط


 1




a 1 ألاحياد : الע
 a 3 ولا : نلا

186



علم'1




 بن



185



 " الدا



 هن

$a-\quad: 1$
a范 (N12

184








 رونـ



$$
\begin{aligned}
& P_{x}: 1 \\
& \text { P - : } 2
\end{aligned}
$$

$$
\begin{aligned}
& \text { a - : }{ }^{4}
\end{aligned}
$$




 ولها لـ
 تـ


 منـه اتلّ

 2اتل : اوه

 قال اهحل





 (1)



$$
\begin{aligned}
& a, p-: 1 \\
& 2 \\
& a p-: 03
\end{aligned}
$$

يـيدن عنه و'ز





 כد



 1 $a p-:$ : 2

180
心．












179
 عن










د دينه: دينةهa

$$
p-j{ }^{\prime}
$$

$$
3 \text { וو : }
$$

178

 عن رسولِ




 ازنـاسونظا فهر نيهـن صـولح على حوّن ديـه وناله

 2 a 2







 عن "ا




$$
1 \text { الدد1حٌ : + هى a }
$$



176

ولنا


 اهــ
 هِّا ل1

 ² ${ }^{2}$ ank



1
a, P 2
a

175
 ور






 هنَ 1 ا عar $a, P-: a \cos -\infty i n$, 1

 در هم ,


 د ك د محِ باما لاحْمَدن انمی1



173
درمهين وعلى

 بربن (1) צ צ 1 11






172
درهمـان












P، 1 a،p-1-1

171

 "نجمحِ

 -苃

 ذ㨁 اللداما 1 حد عنح ونا'لنتv ست~ a 1


170




 هلن







169
 ودع لاهرلو
 وعلم الق









168









 إهع جا
 a عنمبال : بن خالـ

$$
2 \text { - }
$$

167



 تاله وحلنا
保

 اقْنَ



166

1




 1 1+





a 1
2 لا لِشْن : لايِّتق

165


سساتهـا بالذاحيا> -






 كَّثر ون



$$
\begin{aligned}
& \text { 1-9 } \\
& \text { P- }
\end{aligned}
$$

164






程





163




 .




 يفضح عليـهعنهr

162


 الدت~~~









$$
\begin{aligned}
& \text { ــ1 } \\
& \text { 2 } 2 \\
& \text { 3 - الكشمانى: }
\end{aligned}
$$

161









.


a, $P$ - ; W 1

160





 ارْنغ






159

ر寝











$$
P 4+: \operatorname{Li} 1
$$




 , "




 حه, ح标

$$
\text { a, } P \text { ع } 1
$$

a, p - : نـنِّر

157

بلا
سوT

$$
\begin{aligned}
& \text { 品 }
\end{aligned}
$$

14*
 و,




a P- 1

156
 كانتـ











155









 حس, الण


P لا مؤت : الاموات 2 جدبى : حـزبز








 اثمىّ1 9) النى
 - على


153




 وع木界







152
 بن هنـ











151
ذُكرُ الجوكم نَ الشُّا ه
 عله عنc


 'رُ ان




150




 لעا اخنذ آلَّ


 القِالِّ هـن انس


$$
1 \text { يقولd : }
$$

149
1 fre:
 ولم ين ذ









$$
a-: 1
$$

Px: : 2

148
ذكـذلسكK
ونتر


 هُ





$$
\text { - } \dot{\sim}
$$

1 עيقّدرِ' : لايّْ رین U

147









 و1 ا

$$
1 \text { ' الحُّقُح : خـداح P }
$$

146



 كا ن








145

1




 فلدا فتّا
家
 ف، ' ' 1 ' '
a - : 1
$a$ a 2

144

为
 يتا مhاهب,


 عمى المُ!

 a U- : Lo 1

143


 بر باينا




 ,


a مساهب المبىد : 1 a P -

142
القسم_(1)




 الساء وهعأختِّا






141





 فَ البّوا

 بينانقْقاء داء
$\qquad$ $a-: 2,313 \sim 1$

140


 (للصعا بٌ







ا

$$
\text { a } p-9: 1
$$

 ابت ستحيَ

促
 .

 قالْقلت ע,

$\qquad$ ap- : 1-1
 P

رنی نَقْبنوا



 رلّه





a p 1 تنبنهوا: :تتغندا
a مخله : بجلدة






 - ناخرهوُ وردی محد ابن سعد




a
$136$













135

 اـــ السلa








a 1 a 2 P - :

134
خـربح (لِحد1



 1/11






a $a$ : Lin 1 U

133








 متـ


1 حدبت : حدنت P
$132$























 1
 3 زيد : +بـه













1
2
3 حتْه : خيمـه

129




الا









$$
\begin{aligned}
& 1 \\
& 2 \text { - } 2 \text { - لاهعاب : } \\
& 3 \text { دزل : رخوهن }
\end{aligned}
$$

128







 على اشْـا



$$
P U-: t_{1}-1
$$

127







 لــعم او لكدث



126



 قا⿰亻⿱㇒木几⿵⿰丿⿺⿻⿻一㇂㇒丶𠃌⿴囗十 －ceñ



 ，


125


بيت الدال اذ 1 مارت وتقا كان








 a 1

124









 انُّإح

$123$













122

فبا دون كـا ليوز ليح التحم




 ر!




 1 a وضحـــ : دضح a

121







 كايقرلع شلا


 ap-: 1 2- قـلهر : نتدر a

120
القسم_نا












U- - 1
a P 1 بهي:


119









-








 الدوات




$$
\text { a } \quad \text { 1-1 ليسمد.... لa }
$$











 1



116



 رنانـ يردد







a. $p-$ - : 1-1

115


وثأْ








1-


$$
\text { a, } P-: 12, \ldots-\int 6,1-1
$$


























$$
\begin{array}{llll}
a & p-: L & 1 \\
& a-: &
\end{array}
$$

112

位







 بين مسساكن السمو'د ,


P, U المسル

$111$













110




 نـو







109





 عله لا





$$
\begin{aligned}
& \text { 1. } 1 \text {. } 1 \text { - : }
\end{aligned}
$$

ولسِنل ل لهن' ابن



 وتال (1) رالىre


 باهـلـ

107
على
 1.

 ان (1)
 مـُ
 1



a P P الـا






 | 1 ولو

 ش נن ت,

$$
a-2
$$

105



 ,

 رهُتcت هh




$104$












 نتىت ملما (لا تيسا ربـ

 ,







$102$













 ورْ










$$
1 \text { عتش : عشنً }
$$

a, P 2

100

البِاص السا رس












$$
\begin{aligned}
& \text { P- : } \\
& 2 \\
& \text { P - } 3
\end{aligned}
$$





 1





 - بنـيك














$$
\begin{aligned}
& \text { P×:1 }
\end{aligned}
$$



 1










96



 1
 عنـ





$95$




















 المستّ


P- 1- الهـم : P-

1
فِّمِا ، لكنهلز












P - اهل هـا : احلها
 غألادأ رضن




 ابن



a - التمنبِ ؛ a



 ,








وin









 1


$$
1 \text { - فتال : + وتال U }
$$

號
 (









1. الارِن : اهُ












1- باتا: ما اتا

87
ا












2














Paic : 1

$$
a-L_{1}: p L: L b_{2}
$$







 2


 1.

ر



 علـه
 ننذ صصلحى






$$
\begin{aligned}
& \text { p } \\
& \text { a ! ! ! : }
\end{aligned}
$$










 (إد1

P- : ان P-1

82

 +



 :
 عن













 1 ابن صبى : ابن هم a 2 انبيُهْن: انئْنْ 3 يلحت :

80

U














- الهابـايِلd

المون






? ?

a
2- تدV:
 (3) المنقو
 111









q. Eld




وحـتِئع
.



وتُ


P
وَ
 قولـ لِّسْ1




 ونَوذلـد


75



偳

فيمكت ; وز

 ćan
茥

$$
P \times: a)
$$

$$
2 \text { فـئ : وكين a PU }
$$

74


 رنि رنا ,


نسر (的




$$
\begin{aligned}
& 1 \\
& \text { a } p-1 \\
& \text { a P P } 3
\end{aligned}
$$




 , : قحو
 ال1ها 1 لo保



1


 س سعم








1- اللهاة : الاجباة

 لاحـا




 ذلи

左 a 1

70




 رُ
 حق







 عبكاهتع رفم芫



伿


p : 1
P: 1

 تدكتخا ا نا








 $a p-1$
 تُلـرة
 هل
 السِلين



 .

$P-: a$




 رنمه

 عله (3)


 1- توان : تصان

65

اند

和

 لجن فْق






 1





 .

فمن الدركم تمر حـر
 بر رلدتع،
 ششو رَّ

 بسلى .
 1 رنا وه د 1

Px: :~ 2
a 4 بابجاد: بلبهاد

P-: $P x$ : aink 3

62

位 بانُقسنـة a









61


 قسم









$$
\text { P } 1
$$

 البو دا د دن

 صس

 نسأ
 q. لا لا
 كانَ
a P - : بلقدالقنار . 1



 لـن لـد علد








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p-: 1
$$

 يْt يَّ



 حْ..



 (s)
?

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 وضُ,
 ان
 سِ

a P—: : 1 - 1

 عنغ










فْ رلنى人L .


 ونا وسِ (1)
的
 ا? وسلز خـبـ وكن 1




號




53



 , بتُ




$$
\left.\dot{3}^{(11 j \rho}\right)^{\prime \prime}
$$





$$
\begin{aligned}
& \text { P P-1 } \\
& \text { 2-الـديسة: }
\end{aligned}
$$




 نسْلـد ذنص الماب





 1 2- 2 ap- : ا

وتس




 , وسم









 بِّنت امهها










 ابنغعبا



 , ,


 كس بنع⿰习习⿰亻⿱丶⿻工二又











 واللاحا ميْتَ









46

 البنc|




 sin ر号

 1 خ خصر 1 : خصت a a + : 2

فَ
尾 , ${ }^{2}$










$$
\begin{aligned}
& \text { PU }
\end{aligned}
$$

$$
\begin{aligned}
& \text { P - : H-3 }
\end{aligned}
$$

 المسلون رس






رلمـتِ
رلا
$a \quad p \quad L_{1}: \dot{L}_{1-1}$
a p - : :
a

43
 رَسْوِلـ, فأ وقسم شنها الهِ رسمو/ عنما دهن







$$
\begin{aligned}
& 1 \\
& 2 \\
& \text { P- : ايـيا }
\end{aligned}
$$














1
2 بالكتّابب : بالكّاب

41






 كنس
(1)

( )
ودكر

1
P 2

40






 حخر رَسِّ




据





 ， ，و＇
㤢位
 P W：L $4 \neq 2$

انـانوراذهز















 اوسلما دهوقة 1/ عليـ وسلم
 با بهوز



 1.



 ,




 ذ放

وهـن روى رينع انَ '

 بين "شnin ينح الدتمـة الوٌ
 لحم







 رنْ رانهُ


















 رد' عــُعبا

32
 الالسطيث وتل





 تَ

 طم رنمعْ

 نا دون الا
 اهـ





 ${ }^{P} \times:{ }_{1}$
12 P

 الدال المور, su'cicld انقلـ
镍

 ,
 عليمl كن لندكا

غلـة هذه الخالـة

Mr.
 كا
ولا


 ككنْ

我

$$
P-1
$$






 g


 عله"ق




 'ذ
 سِبـر







وفُ كنا
 على


 الدستَ






P 4 هُلات :هُلانا

P
2



 , يصامع على 1

 1
 ا' الهـ



a, pt











 1-1الدو' : الاده'ت

23

 ف和 سیح عمّن الـُطاب رفیا






 الِّا











 "شس



 ( بنc





 انتى $\frac{\text { ونَ روعانغ } 1}{1}$


וֹر
 '


 هُ وته
 رلن النـ إِّا
 1 a 1 2 -











 1 1 يسّندن : دبدون


 سـ الا
 احد رضا





 a


غ











 Px : : 2 Pha : 3

 ,



عنْ
سمحا ا ا



 2

 ;




 ,
 كن

 ابنصالح ايِناوعنا


 عن ابِّه الل حدا




 الـنَ

$$
\begin{aligned}
& \text { a } P \text { P } \mathrm{v} \text { : } \text { : } \\
& \text { P 2- بِتـَ : }
\end{aligned}
$$

ابن












$$
\begin{aligned}
& \text { a 1- الهّ : كـ } \\
& \text { a - } \\
& \text { 3• انبّ: }
\end{aligned}
$$




 vّ

 ابن البى الشَحتا
 حـّ
 نجولد

$$
\begin{aligned}
& \text { P ! ! 1 } \\
& P-: \quad 9 \quad .2
\end{aligned}
$$

$$
\begin{aligned}
& P \text { P : } P \text { - }
\end{aligned}
$$













 تد,



درهمها وقيْزها ومنحت الشامهليما و ديـا رما




 اناكنا حديِّو ${ }^{3}$


Pンク: 1
2 ـ سمبِل : اسماعيل P a

3- هدينَو : هديثى














a P - : : ile


الباب الحاس






ربت
 ذ侍


a $p-:$ : $a^{2} 1$
a $P$ 2













$$
\begin{aligned}
& \text { a }
\end{aligned}
$$

النُطاب
 اكتّ




 ا, من التـــته اسلالحمراللين وتقا


U-1 + :













 و الاودلا واللديا والارنِن كا قالةتحالهمـاكيا





 ا'تـفنى



$$
U-:-1
$$








 را
 الّقوى وآبـاع الدصّين وسلـط علعمن استنكت

 اللقاء والحمْن
 الעديجشون







 a P - والحمن: . 1 2

 ااتصت




 والهنْ نز نیحت على


$$
\begin{aligned}
& a-1
\end{aligned}
$$




[^0]:    1. Islamic Economics, Theory and Practice. M.A.Mannan P. 248
    2. Qur'an 17:27
