Appendix II

A Translation of al-Māwardī's Chapter on the *Maẓālim* Tribunal from *The Ordinances of Government (al-Aḥkām al-sulṭāniyya)*

Conventions of Translation & Sources

Italicized text appears in Davānī's *Maẓālim* treatise either in direct translation into Persian or in summary gloss (Arabic words in parenthesis to note original wording are also italicized).

Underlined sections represent text absent from Abū Yaʿlā Ibn al-Farrā's *Aḥkām al-sulṭāniyya* recension. Occasional alternative wordings or the rare item present in Abū Yaʿlā's text but absent in al-Māwardī's are noted in the footnotes, with **M** indicating al-Māwardī and **Y** Abū Yaʿlā.

§ breaks are my interpolation, while 'Section' in the text comes from the original.

Text in **bold** is of particular significance to this book or referenced more than once.

This translation of al-Māwardī's *Aḥkām* is based on:

1) Baghdādī's 1989 edition (*al-Aḥkām al-sulṭāniyya wa'l-wilāyāt al-dīniyya*, ed. Aḥmad Mubārak al-Baghdādī [Kuwait: Dār Ibn Qutayba, 1409/1989]), which relied on the earlier printed edition by Maṭbaʿat al-Bābī al-Ḥalabī, an eleventh-century manuscript from the Chester Beatty Library (some folios evidently written by the author himself), another fifteenth-century manuscript from the same library and, finally, an admittedly error-laden nineteenth-century manuscript.

2) Enger's 1853 edition (*Maverdii: Constitutiones Politicae*, ed. Maximilian Enger, [Bonn: Adolphum Marcum, 1853]), which, despite its age, often appears more accurate than al-Baghdādī's edition. It relied on a twelfth-century manuscript from the Bodleian Library, a fifteenth-century manuscript from the Bavarian State Library, an additional Arabic copy and, finally, a Persian rendering.

3) Comparison with the Fiqī edition of Abū Yaʿlā's *Aḥkām al-sulṭāniyya* (*al-Aḥkām al-sulṭāniyya*, ed. Muḥammad Ḥāmid al-Fiqī [Beirut: Dār al-Kutub al-ʿIlmiyya, 1421/2000, reprint]).

There have already been at least two translations al-Māwardī's *Aḥkām al-sulṭāniyya* in its entirety into English, one by Asadullah Yate (*Ordinances of Government* [London: Ta-Ha, 1996]) and another by Wafaa H. Wahba (*The Ordinances of Government* [Reading: Garnet, 1996]). My choice to provide this chapter translated here is not a judgment on either of their efforts, which I consulted in the process of my translation.

Concerning the Tribunal of Grievances

Adjudicating grievances (*maẓālim*) means leading disputing parties toward equitable agreement using one's high standing and steering them away from denying one another's [claims] using intimidation and rebuke. Thus, among the conditions required of the magistrate overseeing the resolution of grievances is that of high standing, such that his orders be obeyed, that he enjoy great prestige and display evident probity, such that he not be avaricious but scrupulous in piety. For in his oversight this magistrate must combine the authority of an armed guard with the firmness[1] of a judge. He must combine the characteristics[2] of both these offices, being of lofty standing and one whose orders are obeyed in both respects, like a caliph or those to whom the caliphs have delegated oversight of public matters.[3] If he is among those authorized to look into public matters, like ministers or commanders (*umarā'*),[4] his tending to matters [such as the grievance tribunal] does not require any specific appointment (*taqlīd*), since that is subsumed under his existing general appointment. But if he is not among those delegated to tend to public matters, then he requires a specific appointment. He can take it up if he meets all the aforementioned conditions.

If the official is to adjudicate grievances generally [meeting such conditions] is likely only in the case of those who could be chosen as a successor to rule, as an authorized minister, or as the governor of a region. But if overseeing the grievance tribunal is limited to executing what judges cannot or implementing what they lack the means to implement, then it is permissible for this official to be of lesser standing or power, provided that he fear no reproach in upholding truth and that avarice not leave him vulnerable[5] to bribery.

*And the Messenger of God, may God's peace and blessings be upon him, adjudicated grievances (*maẓālim*) in the matter of irrigation in which al-Zubayr b. al-ʿAwwām,[6] may God be pleased with him, and a man among the Anṣār disputed. He himself took this up, saying to al-Zubayr, "Irrigate using the water, O al-Zubayr, then the Anṣārī man can." The Anṣārī man said, "Because he is your paternal cousin, O Messenger of God?" So [the Prophet] was angered by his words and said, "O Zubayr, let the water flow in its course until it reaches up to your ankles."*[7] And he

---

[1] M: *thabt* / Y: *tathabbut*.
[2] M: *ṣifāt* / Y: *ṣifatay*.
[3] The clause about caliphs or their delegates is missing from Enger's edition of M, appearing in only one ms. in the Baghdādī edition.
[4] Y here overlaps with some mss. of M, explaining M mss. disparity. Y has: So if he is among those authorized to look into public matters, like caliphs or those to whom the caliphs have delegated public matters, like ministers or commanders….
[5] M: *yastashiffuhu* / Y: *yastakhiffuhu*.
[6] The famous Companion (d. 36/656), his mother was the Prophet's paternal aunt.
[7] *Ṣaḥīḥ al-Bukhārī*: *kitāb al-musāqā*, *bāb shurb al-aʿlā qabl al-asfal.*

only said “Let it flow in its course” to discipline [the man] for his presumptuousness with him. And the reason why he told [al-Zubayr] to let the water flow until it reached ankle-height has been disagreed on. Was this the proper right he was clarifying for the two of them as a ruling, or was this something permissible that he ordered as a rebuke to the two responses?[8]

And none of the first four caliphs paid heed to grievances because they lived in the early period, when faith was manifest among those whom fairness would lead to the truth and whom admonition would dissuade from wrongdoing. Disputes would but arise among them in ambiguous matters that the ruling of a judge[9] *would clarify*. If any of their uncouth Bedouins acted unjustly, admonition would persuade them to withdraw, or violence would lead them to desist.[10] So the caliphs of the early generations limited themselves to resolving disputes by their ruling and legal judgment, placing every right in its place and relying on people’s willingness to heed it. And ʿAlī, may God be pleased with him,[11] when his time in leadership was delayed and people fell into dispute regarding it, required more sharpness in governance (*siyāsa*) and increased vigilance in arriving at rulings on obscure matters. He was the first to take this path and did so on his own. He did not set up [an office] for looking into grievances, however, due to his sufficiency in this. He said, regarding the *Minbariyya* question, “Her eighth becomes a ninth.”[12] And he ruled, regarding the girl who bit, the one who fell and the one whose neck was broken, that the compensation payment be in thirds.[13] And he ruled, regarding the boy over whom two women were disputing, with a judgment that settled the matter [i.e., the Solomonic judgment].

Then, after him, matters began to spread, to the point that people began openly wronging and transgressing one another. Rebuke and admonition no longer restrained them from mutual quarrel and deprivation. So they needed an office looking into grievances (*maẓālim*) to deter usurpation and provide fair settlement for those who were wronged, an office that blended the power of political rule and the justice of judgeship. The first to devote a specific day to such wrongs and to sorting through the complaints presented by wronged parties, without

---

[8] This incident raises the question of whether the Prophet issued this ruling out of anger, which contradicts his command that judges not rule when angry. The general response of Muslim commentators is that this would be impossible for the Prophet due to his infallibility (*ʿiṣma*). In his *Sunan* (*al-Mujtabā*), al-Nasā’ī places this Hadith under the chapter title of ‘License for the Trustworthy Judge to Rule when Angry.’ Another argument, mentioned by al-Khaṭṭābī, was that the Anṣārī man had committed apostasy by speaking to the Prophet as he did and had therefore invalidated his property right. The Prophet thus was treating him gently; Ibn Ḥajar, *Fatḥ al-Bārī*, 5:49; al-Khaṭṭābī, *Maʿālim al-sunan*, 4:182.

[9] M: *ḥukm al-qaḍā’* / Y: *ḥukm al-quḍāt*.

[10] M has *yuḥsina* (to do good), but one ms. has *yaḥbisa* (to constrain, desist) / Y has *yakhshuna* (to be rough, crude), which makes little sense. All are orthographically similar.

[11] Enger’s edition of M has *ʿalayhi al-salām* instead of *raḍiya Allāh ʿanhu*.

[12] This is a famous and complex question of inheritance law that ʿAlī was asked about while on the pulpit (*minbar*) of the mosque in Kufa.

[13] In this case, ʿAlī was asked about three girls who were playing. They climbed onto each other’s shoulders, then the girl on the bottom bit the girl in the middle, who then fell, leading the girl on the top to fall and break her neck. He ruled that the compensation payment was due from the families of the bottom two girls, but he reduced it by a third because the topmost girl was partially responsible for her own death.

addressing them directly, was *ʿAbd al-Malik b. Marwān.*[14] *When he came across something particularly difficult or needed a ruling to be implemented, he directed it to his judge Abū Idrīs al-Awdī,*[15] who would implement his ruling, thanks to the opposing parties' fear of ʿAbd al-Malik b. Marwān and his awareness of the dispute and his having identified the cause. So Abū Idrīs dealt directly with the matter, while ʿAbd al-Malik provided the authority behind him.

Then the injustice of governors and the wrongdoing of the arrogant increased such that only the strongest of hands and most binding of commands could restrain them. *So [the Umayyad caliph] ʿUmar b. ʿAbd al-ʿAzīz,*[16] *may God be pleased with him, was the first to assign himself to examining grievances and removing them, observing just precedents (*sunan*). And he removed the injustices (*maẓālim*) done by [his own] Banu Umayya clan, such that he was told, after being strict and severe with them, "We fear that you will face consequences for removing them." He responded, "May I not be spared any day that I fear or am wary of other than the Day of Resurrection."*

After that, a number of the Abbasid caliphs sat to [address grievances]. The first to do so was al-Mahdī,[17] *then al-Hādī,*[18] *then al-Rashīd,*[19] *then al-Ma'mūn.*[20] *And the last to do so was al-Muhtadī, such that properties were returned to their rightful owners. And the kings of Persia had considered this to be one of the bases of rule and the canons of justice, without which righteousness cannot prevail and equity cannot obtain.*

And during the age of ignorance before Islam, the Quraysh tribe, when its chieftains had grown in number, its primacy had spread and they had begun seeing usurpation and contention that could only be restrained by a powerful authority, they concluded a pact to remove wrongs done (*maẓālim*) and to do justice for those wronged. The cause of this was recounted by al-Zubayr b. Bakkār[21] [as follows]:

A man from Yemen, from the Banu Zabīd clan, had come to Mecca on pilgrimage, bringing with him goods for sale. A man from the Banu Sahm clan, said by some to be al-ʿĀṣ b. Wā'il, bought them from him. But the man cheated him of his due, so [the Yemeni man] asked him for his goods back, and he refused. So the [Yemeni] man stood up on a rise and recited at the top of his lungs:

---

[14] The Umayyad caliph, r. 65/685 – 86/705.

[15] This is likely actually ʿĀbid Allāh (or ʿĀ'idh Allāh) b. ʿAbdallāh al-Khawlānī (d. 80/699), who served as a judge from 684-99 CE and whom al-Māwardī and Abū Yaʿlā may have confused with ʿAbdallāh b. Idrīs al-Awdī of Kufa (d. 192/808), a famous Hadith transmitter about whose death date many erred; Wakīʿ Muḥammad b. Khalaf, *Akhbār al-quḍāt*, ed. Saʿīd al-Laḥḥām (Beirut: ʿĀlam al-Kutub, 2001), 618; Ibn Saʿd, *al-Ṭabaqāt al-kubrā*, ed. ʿAlī Muḥammad ʿUmar (Cairo: Maktabat al-Khānjī, 1421/2001), 9:451; Steven Judd, *Religious Scholars and the Umayyads* (New York: Routledge, 2014), 106; al-Dhahabī, *Siyar*, 9:42-44.

[16] R. 99/717 – 101/720.

[17] R. 158/775 – 169/785.

[18] R. 169/785 – 170/786.

[19] R. 170/786 – 193/809.

[20] R. 189/813 – 218/833.

[21] Noted genealogist, historian and judge from Medina, d. 256/870.

O family of Quṣayy [i.e., the Quraysh], for one wronged of his goods,
in the valley of Mecca, far from home and kin,
Hair matted, still in the pilgrim's state,
Between the station [of Abraham], the enclosure [of the Kaaba] and the [Black] stone.
Will any among the Banu Sahm rise for their responsibility,
Or will the property of this pilgrim vanish in error?

And Qays b. Shayba al-Sulamī sold some goods to Ubayy b. Khalaf. But [Ubayy] cheated him out of his due, so he sought aid from a man from the Banu Humuj.[22] But he offered him none. So Qays recited, in the *rajaz* meter:

O Quṣayy, how can it happen in the Sacred Precinct,
With the sanctuary of the House and its noble, allied protectors,
That I am wronged and not shielded from the one who wronged me?

So al-ʿAbbās b. Mirdās al-Sulamī responded:

If your protector has done nothing to help you,
And you've drunken great draughts from the cup of humiliation,
Then go to the houses and stand before their families,
You'll find in their redress neither obscenity nor wrong.
And whoever seeks refuge by the House, will find Ibn Ḥarb [i.e., Abū Sufyān] and ʿAbbās.
My people, Quraysh, perfect in character, in glory and strength as long as they live and toil,
Tend to the pilgrims, while this one spreads division, for glory is handed down generation after generation.

*So Abū Sufyān and al-ʿAbbās b. ʿAbd al-Muṭṭalib rose and had [Qays'] property returned to him. And the various clans of Quraysh gathered and swore a mutual oath in the house of ʿAbdallāh b. Judʿān to address injustices (*maẓālim*) done in Mecca, to let no one commit injustice there and to render unto those wronged their rights. And the Messenger of God, may God's peace and blessings be upon him, was present with them on that day, before his prophethood, when he was just twenty-five years old. They swore this Alliance of Virtue (*ḥilf al-fuḍūl*) in the home of Ibn Judʿān. And the Messenger of God said once, recalling that moment, "I was present in the home of ʿAbdallāh b. Judʿān for the swearing of the alliance of virtue. And if I had been called to swear to it, I would have. It would have been more precious to me than red camels [i.e., a rare and valuable type]." He recounted the story and added, "Islam only increases this in strength."*[23] And someone from Quraysh said, regarding this alliance:

[The clans of] Taym bin Murra, if you asked, of Hāshim,

[22] Enger has *Jumaʿ* instead of *Humuj*.
[23] For this Hadith, see *Musnad Aḥmad Ibn Ḥanbal*: 1:190 (Maymaniyya print).

And Zuhra, the best, all in the house of Ibn Judʿān,
Swearing the oath of allegiance to magnanimity as long as
Leaves tremble on any branch or twig.

And though this was an act done in the age prior to Islam and called for by the needs of governance, the presence of the Messenger of God, may God's peace and blessings be upon him, and his affirmation of it renders it a legitimate rule of the Sacred Law (*ḥukm sharʿī*) and a prophetic act.

§

Thus, if a person is appointed to preside over the grievance tribunal, he should announce an assigned day for this, so that aggrieved parties can seek it out and disputants can bring their claims before him. In this way, the other days are free for his other leadership and management duties, unless he be an official appointed solely to respond to grievances on all days of the week. And he should be easy to access and keep only reputable company.

§

Sessions devoted to the task [of adjudicating grievances] absolutely require the presence of five types of officials:

First, guards and assistants to manage the strong and discipline the unruly.

*Second, judges (*al-quḍāt wa'l-ḥukkām*) to make known those rights that are established in their view and for their knowledge of procedure between disputants.*

*Third, jurists (*fuqahā'*) to consult on difficult or unclear points.*

Fourth, secretaries to record what transpires between disputants and what rights and rulings are decided for and against them.

*Fifth, witnesses and notaries (*shuhūd*) to testify to what rights are required and to certify rulings.*

If a grievance tribunal includes these five, aforementioned groups, the official can begin addressing them.

§

*There are ten types of subject matter that are dealt with in addressing grievances (*maẓālim*):*

The first type is looking into governors' transgressions and arbitrary treatment of their subjects. This is an essential duty of the grievance tribunal regardless of whether anyone complains of

wrongs done. The official [in charge] should regularly examine the conduct and circumstances of governors in order to bolster them if they are just, restrain them if they are arbitrary and even replace them if they are unjust. It is said that ʿUmar b. ʿAbd al-ʿAzīz addressed the people during the early days of his caliphate. Indeed, this was among his first speeches. He said to them:

> *I counsel you all to have fear God, for He accepts nothing else and welcomes only those possessed of it. Some of those in authority have barred people from their rights until they are bought off and have spread falsehood until they are paid. By God, if not for a truthful tradition (*sunna*) that I'd revived after it had gone extinct or a false tradition that I stamped out as it thrived, I would not wish to live a single day more. Ensure the prosperity of what awaits you all in the Hereafter, and this life will be prosperous for you.* There is none since the time of Adam but death has taken them, they are soaked through by death.

The second type are wrongs done by officials in the collection of taxes. In this case, recourse should be to the just regulations found in the books of leading scholars and enforcing these among the people. Officials should be held to these rules, and it should be assessed whether they collected an excessive amount. If that amount had been sent already to the treasury, it should be returned. And if those officials took it for themselves, it should be returned to its rightful owner.

It has been reported that [the Abbasid caliph] al-Muhtadī,[24] may God be pleased with him, once held a session to hear grievances, and some complaints were presented to him regarding [payments made] in fractions of coins (*kusūr*). [The vizier] Sulaymān b. Wahb[25] said:

> ʿUmar b. al-Khaṭṭāb, may God be pleased with him, collected the land tax from the people of southern Iraq and areas conquered in the east and west in the form of coins and also in kind. And silver and gold coins were minted in that time according to the weights and measures of the Persian and Byzantine emperors. The populace would pay the proper amount in whatever denomination they had available and did not pay heed to how one kind of weight varied from another. Then corruption spread among the people, and those paying the land tax would pay in Tiberias-minted coins, which are each four *dāniqs*, keeping the *Wāfī* coins, which each weighed a *mithqāl* [i.e., 9 *dāniqs*]. When [the Umayyad governor] Ziyād took charge of Iraq, he demanded that payment be made in *Wāfī* coins, obliging them to pay in coin fragments. So the tax officials of the Banu Umayya acted corruptly, until ʿAbd al-Malik b. Marwān acceded to the throne. He examined the two weights and set the weight of a silver coin at seven tenths of a *mithqāl*, leaving the *mithqāl* as it was. Then, later,

[24] R. 255/869 – 256/870.
[25] A prominent Abbasid scribe and vizier, d. 272/885.

> [the Umayyad governor] al-Ḥajjāj once again required fractions of coins be used, until ʿUmar b. ʿAbd al-ʿAzīz reversed the policy once again. Then it was reversed after him until the time of [the Abbasid caliph] al-Manṣūr,[26] to the point that southern Iraq fell into ruin. So al-Manṣūr removed all coin taxes on wheat and barley, instead applying crop sharing, and these were the two main source of revenue for southern Iraq. Some few seeds, date palms and other trees were still subject to taxation, as people today are forced to pay in coin fractions and other stock.

Al-Muhtadī replied, "God forbid that I subject people to injustice, whether it has been done before or not. Remove this [tax] from the people." And al-Ḥasan b. Makhlad[27] said, "If the Commander of the Faithful removes this tax, the ruler's revenue per year will decrease by twelve million dirhams." Al-Muhtadī replied, "I must affirm a right and remove a wrong even if I leave the treasury in ruins."

The third type are [wrongs done by] the administrative scribes, because they are the secretaries trusted by the Muslims with the integrity of their wealth, what they pay and what they are due. So the magistrate [overseeing the grievance tribunal] should monitor them as long as they are charged with those duties. If they veer away from what is right, in increase or decrease, with regards to revenue or expenditure, the magistrate should make them comply with the regulations and provide compensation for their transgressions.

It is said that it reached [the caliph] al-Manṣūr, may God be pleased with him, that a number of his administrative scribes had been inflating and falsifying records. He ordered them brought to him for disciplining. One of them, a young man, recited, as he was being lashed:

> May God prolong your life in righteousness
> and glory, O Commander of the Faithful!
> We seek your pardon, and, if you grant us it,
> Then surely you are the protector of all the worlds!
> And we, the scribes, who have done wrong,
> leave us to the scribes most noble [i.e., the angels recording people's deeds]!

So the caliph ordered their release and showed favor to the young man, since he had demonstrated intelligence and honesty.

And in these three above types, the magistrate tending to grievances does not need to wait for a complaint to come from someone claiming to have been wronged.

---

[26] R. 136/754 – 158/775.

[27] Another Abbasid scribe and vizier, d. 269/882.

The fourth type is wrongs suffered by those holding salaries or pensions that are either inadequate or tardy or that have not been administered properly. This should be referred back to the ministry charged with granting just stipends and rectified, examined for what had fallen short or been withheld up to that point. If it was taken by the responsible officials, it should be recovered from them. And if they had not taken it, its restitution should come from the treasury.

When a military commander wrote to [the Abbasid caliph] al-Ma'mūn that the soldiers were running wild and looting, he replied, "If you had been just with them, they would not have run wild. And if you had given them their due, they would not have looted." And he dismissed him and lavished their wages upon them.

*The fifth type is the restoration of expropriated property, which is of two sorts. The first is government property (*sulṭāniyya*) seized by unjust officials, such as properties seized from their owners either out of some desire for them or to transgress upon the owners. If this is discovered by the magistrate of the grievance tribunal in the process of looking through administrative matters, he should order it returned before any complaint of wrongdoing is made to him. If he does not so discover it, then it depends on the owners bringing the complaint to him. It is permitted for the magistrate, when such a complaint of wrongdoing is brought, to refer to governmental records. If mention is found in them of that property having been seized from its owner, this should be acted on. And the magistrate should order it returned. He needs no direct evidence (*bayyina*) testifying to this,[28] as what he finds in the records suffices.*

So it has been reported regarding ʿUmar b. ʿAbd al-ʿAzīz, may God have mercy on him, that he went out one day to pray. A man happened upon him who had come from Yemen to complain of a wrong done. He said:

> You call to your door those wronged and in confusion,
> And now one wronged has come to you from a distant abode.

He replied, "What is your grievance?" The man answered, "[The earlier caliph] al-Walīd b. ʿAbd al-Malik[29] seized some of my property unlawfully." [The Caliph] called out, "O Muzāḥim [i.e., one of his assistants], bring me the records of the lands held by the Persian nobility (*al-ṣawāfī*)!" He found there that God's servant al-Walīd b. ʿAbd al-Malik had appropriated the property of so-and-so. So he said, "Remove this from the record and let it be recorded that this property is being returned to him, with double its revenue given to him."

[28] Y has the problematic phrasing: and he does require direct evidence.
[29] R. 86/705 – 96/715.

The second type of expropriated items are what the powerful have taken control of and used out of sheer force, as if they were the owners. These cases depend on the wronged parties bringing the cases and cannot be recovered from their possession except via four means: either by the admission of the expropriator and their confession, by the magistrate of the grievance tribunal learning of it, in which case he can rule on it based on that knowledge,[30] *by the required number of notarial witnesses (*bayyina*) testifying either to the expropriator's act or that the usurped property belonged to its owner, or finally by the accumulation (*taẓāhur*) of reports to such an extent that conspiring to produce them would have been impossible. And doubt should not shake this since, being that notarial witnesses base their testimony regarding properties on the predominance of reports [regarding who legally owns them], the ruling of those overseeing the grievance tribunal [on the basis of so many reports] is even more reliable.*

*The sixth type [of wrongs done] is found in the supervision of pious endowments, which consist of two types: public (*ʿāmma*) and private (*khāṣṣa*). As for public endowments, [the magistrate] begins by looking through them even if no complainant has come forward with a grievance, so that he can facilitate their proper function and have them operate according to the conditions set by the endower. These he can discover through one of three ways: either from the records of those judges delegated to assure legal rulings [regarding the endowments] are followed, from the state administration's records of transactions that mention the endowments in question, or, finally, from what was written down in [the endowment's records] at some earlier period and which seems to be authentic, though no notarial witnesses can testify to it, since there is no one disputing them. And the [magistrate's] remit is even broader in private endowments.*

*As for private endowments, his examination of these depends on a person associated with the endowment claiming to have been wronged in a dispute. In such cases of dispute, he acts according to what establishes rights in the eyes of a judge (*ḥākim*). He is not permitted to refer back to government records or what is found in prior, older written records [from the endowment] if there are no vetted notarial witnesses to testify to them.*

*The seventh type [of wrongs done involves] enforcing rulings that had been issued by judges (*quḍāt*) [but were then unenforced] due to the judges being too weak to enforce them and due to their inability to implement them on the losing party because of his strength or standing.* But the magistrate of the grievance tribunal is stronger and has more authority, so he can enforce the ruling for those whose property has been expropriated or who need to pay what they are responsible for.

*The eighth type involves looking into matters regarding public interest that those officials responsible for market inspection (*ḥisba*) are unable to tend to*, such as someone doing unacceptable things openly that they cannot prevent, transgressing [upon others] in the

[30] Y includes the qualification: though it be disagreed on (*ʿalā ikhtilāf fīhi*).

public streets in such a way that they cannot stop it, or impinging on others' rights such that they cannot rectify it. In all such cases, [the magistrate] holds them accountable to the rights of God most high and orders them compelled to perform what is required.

*The ninth type is overseeing public worship such as Friday prayers, Eid, Hajj and legitimate warfare (*jihād*)* and assuring that there is no negligence in these and that all their conditions are fulfilled. For the rights of God and obligations due Him are the most deserving of fulfillment and performance.

The tenth type involves looking into disputes between parties and ruling between them, during the course of which he should not depart from what the truth and right requires and entails. ***It is not permitted for him to rule beyond the rulings made by judges (*al-ḥukkām wa'l-quḍāt*).*** And it may be that the [manner of] ruling in the grievance tribunal eludes those responsible and that they are then unjust in their rulings and exceed the bounds of what is allowed for in that setting.

§

There are ten aspects in which adjudications by the grievance tribunal are distinguished from those done by judges:

First, the authority and gravitas enjoyed by the official overseeing the grievance tribunal but not by judges allow better for preventing disputants from mutual recrimination and stopping wrongdoers from overweening conduct and quarreling.

Second, the grievance tribunal can go beyond the narrow realm of the required to the wider realm of permissibility, so the magistrate has a wider purview.

Third, he enjoys increased ability to intimidate and investigate types of indicia and ***circumstantial evidence*** *(*shawāhid al-aḥwāl*)* in a manner not available to judges (*ḥukkām*), allowing him ensure rights and discover what or who is denying them.

Fourth, he can match those whose wrongdoing is evident with remonstration and those whose enmity is manifest with rectification and discipline.

*Fifth, he can take more time than judges (*ḥukkām*) in repeated questioning of the disputants when their affairs are unclear and their rights recondite, to look in depth into causes and their conditions. This is not available to a judge, who, when one of the disputants asks him to rule on the matter, is not permitted to delay. But this is permitted to the magistrate of the grievance tribunal.*

*Sixth, he can refer recalcitrant disputants to the mediation of trustworthy parties to sort out the dispute between them and to reach a mutually acceptable agreement. The judge (*qāḍī*) cannot do this without the agreement of both disputants.*

*Seventh, he has latitude in ordering the two disputants detained and investigated (*mulāzama*) if indications have made it clear that blatant lying has occurred and to require bail be offered as far as is permitted to him, to encourage the disputants to deal fairly and to discourage them from lying and blatant denial.*

Eighth, he can hear the testimony of witnesses of unsure standing, in a manner beyond the custom of judges (*quḍāt*) hearing [only] the testimony of upstanding witnesses.

Ninth, he can force the witnesses to swear an oath if he has doubts regarding them if they have changed their testimony, and he can bring a larger number of them in order to remove any doubt and suspicion he has. The judge (*ḥākim*) cannot do this.

Tenth, he is permitted to begin by calling the witnesses and asking them what they know regarding the issue disputed by the two parties. The normal practice of judges (*quḍāt*),[31] meanwhile, is initially to place the burden of bringing direct evidence on the plaintiff, and they only hear this evidence after the plaintiff has been questioned.

These are ten aspects in which the conduct of the grievance tribunal and that of judges differ regarding disagreements and disputes. And those two offices are equal in other regards. Now we will clarify in detail these ways in which the two offices differ, God willing.

§

Section:

In light of the aforementioned, a claim brought before the grievance tribunal must fall into one of these three situations: either the claim is accompanied by something that bolsters it, by something that weakens it, or by neither of these two. If it is accompanied by something that strengthens it, then it would be one of six potential situations, which differ in degree regarding the strength of the claim:

The first of such situations is as follows: that the claim is accompanied by documentary evidence (*kitāb*) containing available vetted witnesses [i.e., to testify to the document's contents]. What then concerns the magistrate overseeing the grievance tribunal regarding such a claim are two elements: first, that the magistrate begins by calling the witnesses to give their testimony; second, that he rejects the [defendant's] denial due to his circumstances or circumstantial evidence regarding him.

[31] Y has: *al-ḥukkām wa'l-quḍāt*.

If the magistrate of the grievance tribunal is someone of lofty status like the caliph, a delegated vizier or a regional governor, when he brings forth the witnesses he should take into consideration the [status] of the two disputants, as good governance (*siyāsa*) requires. If their standing is also high, he should attend to the case himself. If the parties are of middling standing, he should delegate this to his judge (*qāḍī*) [to be adjudicated] in the magistrate's presence. And, finally, if the parties are obscure, then the judge should adjudicate it at some distance from the magistrate.

It is said that al-Ma'mūn, may God be pleased with him, used to sit to hear grievances on Sundays. One day he rose from the session, and a woman wearing rags approached him, saying:

O best of those who are fair, one granted wisdom,
O leader by whom the land has been illuminated,
To you, pillar of dominion, now complains a widow,
Set upon by a lion she cannot resist
He has usurped from her lands that had once been secured her,
Since her kin and children have all parted ways.

Al-Ma'mūn looked down in thought, then raised his head and said:

By less than what you've recounted have patience and resilience been tested,
And the heart been afflicted with sadness and grief.
Now is the time of the noonday prayer, so go
And bring the opposing party on the appointed day.
Saturday's session will be devoted to us,
And I will give you justice, our else the session on Sunday.

So she departed and then came to the session on Sunday before anyone else. Al-Ma'mūn asked, "Where is your disputant?" She answered, "The person right beside you, the Commander of the Faithful's son, al-ʿAbbās." Al-Ma'mūn told his judge, Yaḥyā b. Aktham,[32] though it is also said that he spoke to his vizier Aḥmad b. Abī Khālid,[33] "Sit her and him [i.e., al-Ma'mūn's son] down and adjudicate between them." He sat them down and did so in the presence of al-Ma'mūn, and her voice began to rise. One of the chamberlains rebuked her, so al-Ma'mūn said to him, "Leave her be, for truth has made her speak and falsehood has left him silent." And he ordered that her lands be returned to her. What al-Ma'mūn did in his procedure with these two, being in their presence but not taking up the case himself directly, is what was called for by good governance (*siyāsa*) in two ways. First, the ruling would either have been in favor of his son or against him. It is not permissible for him to rule in his son's favor, though it would be to

[32] A famous judge, jurist and caliphal advisor, d. 242/857. He was appointed as the judge and then the *maẓālim* magistrate of the new capital of Samarra in 237/851-2; Ibn al-Jawzī, *Muntaẓam*, 11:250.
[33] Aḥmad b. Abī Khālid al-Aḥwal, (d. 212/827-8).

rule against him. Second, the other disputant was a woman who was beneath being addressed by al-Ma'mūn, while his son was of too lofty a station for anyone other than [the caliph] to force him to relinquish her right. So he had the case heard in his presence by someone who was suitable to engage with the woman in addressing her claim and assessing proof, while al-Ma'mūn himself, may God be pleased with him, enforced the ruler and upheld her right.

The second situation regarding the strength of a claim is that it is accompanied by a written list of vetted witnesses, but they are not present. In such a case, what distinguishes the magistrate of the grievance tribunal [from the judge] are four things:

*First, he can intimidate the defendant and thus hasten his admission, since the magistrate has powers of intimidation [that the judge lacks], which obviates the need to hear direct testimony (*bayyina*).*

Second, he can proceed to having the witnesses brought to the court if he knows their location and if this does not cause them undue hardship.

*Third, he can have the defendant detained (*mulāzama*) for three days with the possibility of extending this period if he deems it appropriate in light of the strength of evidence and indications of truth.*

Fourth, he can examine the claim and, if the issue is financial, he can force the defendant to find a guarantor. And if the issue is some property, like land, he can place a freeze on it so that its ownership cannot be transferred, and he can turn over its use and yield to a trustworthy party who can oversee it. If time passes, and it seems unlikely that the witnesses will come, the magistrate of the grievance tribunal can renew his inquisition of the defendant regarding his properties or income. And Mālik b. Anas, may God be pleased with him, allowed asking the defendant about his involvement and claim of ownership in such cases, though al-Shāfiʿī and Abū Ḥanīfa did not allow it. The magistrate of the grievance tribunal can utilize what is permitted and is not restricted just to what is required. If the [defendant] responds in a way that terminates the dispute, the magistrate rules accordingly. **If not, he sorts it out between them based on what the Sacred Law (*sharʿ*) obliges.**

The third situation regarding the strength of a claim is that the document accompanying it contains [the names of] witnesses who are present but not vetted (*ghayr muʿaddalīn*) by the judge (*ḥākim*). In this case, what distinguishes the magistrate of the grievance tribunal is that he can immediately proceed to inquire into this by bringing the witnesses and examining their quality. He could find that they fall into one of three categories: either they are people of some standing and respectable conduct, in which case trusting their testimony is more compelling; they turn out to be, after examination, of poor standing (*ardhāl*), so they cannot be relied upon, though they could still function to intimidate the opposing party; or they are of a middle tier, in which case [the magistrate]

can, after examining them, have them take oaths, either before or after he has heard their testimony, if he deems that appropriate.[34]

In the case of hearing the testimony of these two types [i.e., the first and the third], the magistrate has three courses of action available. Either he can hear their testimony himself and rule on that basis; he can turn hearing their testimony over to a judge (*qāḍī*), who would then pass this back to him, in which case ruling on that basis would depend on his [i.e., the magistrate's assessment], since the judge is only permitted rule on the basis of the testimony of a witness he deems reliable; or he can turn hearing their [testimony] over to vetted witnesses [i.e., notaries]. If he charges them with transmitting the testimony to him, [those notaries] are not required to investigate the character of those [witnesses]. But if the magistrate tasked them with providing him whatever testimony of the witnesses proved sound and acceptable, then those notaries would be required to assess the witnesses according to what would be required for their testimony to be accepted, such that they could offer up that testimony, its reliability having been established, and a ruling arrived at accordingly.

The fourth situation regarding the strength of a claim is that the document accompanying it contains the testimony of witnesses who are vetted and upstanding but deceased, but the document itself has been authenticated. In this case, what distinguishes the magistrate of the grievance tribunal is three items: firstly, intimidating the defendant in such a way that he is compelled to be truthful and admit the truth; secondly, he can ask [the defendant] how he came into control or possession [of the disputed property], since it is possible that his reply could help the truth become clear; and thirdly, uncovering the situation by [questioning] the neighbors of the [disputed] property or of the two disputants so that the magistrate can arrive at clarity regarding the truth and identify which party is in the right.[35]

If he is unable to arrive at a [resolution] via any of these three routes, he should turn the case over to respectable intermediaries who inspire obedience, are familiar with the two parties, have experience with the issue at dispute, and who can compel them, via repetition over an extended period, to both be truthful and reconcile.[36] Either this all results in [a ruling] for one of the parties,[37] **or the ruling is made according to the procedure of the judge (*ḥukm al-qaḍā'*).**

The fifth situation regarding the strength of a claim occurs when the plaintiff produces [a document] that concerns the contested issue in the defendant's handwriting. Here, the grievance tribunal requires the defendant be questioned regarding the handwriting. *If he is asked: "Is this your writing?" and he acknowledges it, he needs to be asked about the*

---

[34] Y and one ms. of M have *akhlāq* instead of *aḥlāf*.
[35] Y adds: and tell the rightful party from the false one.
[36] Y has: truthful or to reconcile.
[37] Thus Y and several mss of M, while one has: Either this results in mutual truthfulness and reconciliation…

*authenticity of the content. If he acknowledges the authenticity of its content, then he confirms [the accusation] and is then obliged to accept the resolution [based on his] admission. If he does not admit the authenticity of the content, some magistrates of the grievance tribunal would rule against him based on his writing if he had admitted it was his, even if he did not admit the accuracy of the contents, seeing this as a type of circumstantial evidence according to prevailing conventions (*wa-jaʿala dhālika min shawāhid al-ḥuqūq iʿtibāran bi'l-ʿurf*).* Scrupulous scholars and all the jurists among them,[38] however, argue that the magistrate is not allowed to rule on the basis of the writing alone (*mujarrad al-khaṭṭ*), unless [the accused] also acknowledges the document's contents, **because adjudicating in the grievance tribunal does not allow (*lā yubīḥu*) what the Sacred Law (*sharʿ*) forbids.**

In such a case, adjudicating in the grievance tribunal entails referring back to what [the defendant] recalls regarding his writing. If he says, "I wrote this so that he would offer a loan to me, but he never lent me anything," or "so that he would pay me a certain price regarding what I sold him, but he never paid." This is something people occasionally do. In such cases, the magistrate of the grievance tribunal should utilize what means of intimidation they have according to how they view the situation and what would strengthen evidence, and then the case should be handed off to intermediary [officials]. If it does not result in reconciliation and agreement, **then the judge (*qāḍī*) should arrive at a ruling for the two parties by having them swear oaths.**

If the [defendant] denies the handwriting, some magistrates of the grievance tribunal compare it to other examples of their writing, having them write out text repeatedly until it becomes impossible for them to feign or dissimulate [in their script]. Then the magistrate compares the two writing samples. If they resemble one another, he rules accordingly against the defendant. This is the position of those scholars who consider writing to be dispositive and rule on its basis. But the position of scrupulous scholars (*muḥaqqiqūn*) is not to undertake this [comparison of writing] to arrive at a ruling directly but rather to intimidate the defendant. Indeed, the suspicion [of the defendant's guilt] is weaker when he has denied it is his writing than when he acknowledges it is his. And suspicion is removed altogether if the two scripts are totally unlike. [At this point], it is the plaintiff's turn to be intimidated. And then the two are handed over to intermediary [officials]. If it does not result in ruling,[39] **then the judge (*qāḍī*) should arrive at a ruling for the two parties by oaths.**

The sixth situation regarding the strength of a claim is when an accounting leger (*ḥisāb*) is produced regarding the contents of the claim, and this situation occurs in cases of financial and commercial transactions (*muʿāmalāt*). The accounts leger can be one of two types. Either it is the accounts leger of the plaintiff or that of the defendant. If it is the plaintiff's accounting leger, then it merits less suspicion, and in such cases the

[38] Y has: What had been held by a group – and they are the majority – is that….
[39] Y has: result in reconciliation….

grievance tribunal then examines how well ordered the leger is. If it is disordered and likely that falsification occurred, then it is dispensed with. This suggests the claim is weak rather than strong. If it is well ordered and organized, however, and it has been carefully copied, then this inspires more trust. It follows that it should be used to intimidate [the other party] on the basis of what indications it contains. Then the two parties should be handed over to intermediary [officials], then, [if there is no resolution], to a final ruling [i.e., by a judge].

If the accounts leger is the defendant's, then it strengthens the claim even more. Either it is deemed to be his writing or that of his scribe. If it is alleged to be his writing, then the magistrate of the grievance tribunal should ask the defendant, "It this your writing?" If he acknowledges it, he is asked, "Do you know what it is [i.e., its contents]?" If he admits he is familiar with it, he is asked, "Do you acknowledge its authenticity?" If he acknowledges its authenticity, then by these three admissions he has acknowledged the contents of the accounts leger, and he is held accountable to that admission. But if he acknowledges that it is his writing yet denies familiarity with its contents and does not acknowledge its authenticity, then those magistrates of the grievance tribunal who accept ruling on the basis of writing [in documents] rule against him on the basis of his accounts leger even if he does not admit its authenticity. [Such magistrates] consider trust in such [documents] to be stronger than confidence in unacknowledged written records (*al-khaṭṭ mursal*), since the delivery of an item will not be noted in an accounts leger until it has been received. But the position of scrupulous scholars (*muḥaqqiqūn*),[40] and it is the position of the jurists, is that [the defendant] is not ruled against on the basis of an accounts leger the authenticity of whose contents he has not acknowledged. **Rather, it offers more use as a means of intimation than an unacknowledged document would on the basis of the above-mentioned differences between the two types [of documents] in customary practice (*ʿurf*).** Then the two are referred to intermediary [officers, and, if there is no resolution,] then to a settlement by a judge (*qaḍā'*).

If the handwriting is attributed to the [defendant's] scribe, the defendant is asked concerning this before his scribe is. If he acknowledges the document's contents, he is held accountable for them. If he does not acknowledge them, his scribe is asked about them. If the scribe denies they are his, this weakens suspicion. If he is a dubious person, then the magistrate should intimidate him [into divulging something], though not if he is trusted. If he acknowledges the writing is his and acknowledges its contents, he becomes a witness against the defendant, who is ruled against on the basis of this testimony provided the scribe is upstanding (*ʿadl*) and provided [the magistrate] holds one can rule on the basis of one witness and the oath [of the plaintiff], either because of his school of law (*madhhab*) or out of political authority or policy concern (*siyāsatan*) called for by the circumstances of the case. For in the grievance tribunal the

[40] Y has: And the majority have held….

circumstances of cases can alter rulings. And in each case, there is a limit to what intimidation is used that cannot be exceeded, determined by the situations of each case.

§

Section on if the claim is accompanied by something that weakens it.

There are six situations in which it is accompanied by something that weakens it, which contrast with the situations in which it is strengthened and in which the intimidation [employed by the magistrate] shifts from being deployed against the defendant to being deployed against the plaintiff.

The first situation is that the claim is met with a document with witnesses who are available and whose testimony proves the falseness of the claim. And this can be of four sorts. Firstly, that they testify that what he claimed he had actually sold. Secondly, that they testify to his having admitted to having no basis for the claim he was making. Thirdly, that they testify that his father, whom he had claimed had transferred the property, admitted that there was no basis for the claim he was making. Fourth, that they testify for the defendant that he is the owner of what [the plaintiff] is claiming, testimony that proves false his claim and obliges[41] that he be disciplined in a manner appropriate to his status. If he says, as people occasionally do, that this testimony to the effect that the goods had been sold was actually [describing] the property being offered as collateral (*rahn*) or as a compelled sale (*iljā'*), then the book listing sales should be examined. If it notes that it was not a case of putting up collateral or a compelled sale, this casts doubt on the claim. And if the book does not include this, the claim is bolstered. And intimidation should be wielded against whichever of the two parties is appropriate considering the circumstances. [The magistrate] should also inquire from neighbors and those who have interacted with the parties. If something emerges that requires reinterpreting the contents of the document, the magistrate should do so. If nothing does, then the signature of the notaries to the sale is the most compelling evidence for a ruling.

On the question of asking the defendant to swear an oath that the sale really took place, not as offering security or under severe duress, jurists have disagreed on the permissibility of this due to it differing from what he had originally claimed. Abū Ḥanīfa, may God be pleased with him, along with part of the Shāfiʿī school have held that having the defendant swear such an oath is permissible because what he has claimed is a possibility. Others from the Shāfiʿī school have not allowed it, since what he had previously acknowledged contradicts his later claim.[42] The judge (*qāḍī*) of the grievance tribunal should act in the laws (*qawānīn*) he applies according to the circumstances of the cases. And along those lines, if the claim being made is for a debt that is owed, and

[41] Y adds in here: of the grievance tribunal.
[42] Y summarizes these arguments but does not attribute them to any school.

the defendant produces a document exonerating himself from that, but the plaintiff states that he had signed to this effect before he had actually been paid but was then never paid, having the defendant swear an oath is as has been mentioned previously.

The second situation is that the document countering the claim being made has upstanding witnesses who are absent. This can be of two types.

First, that the denial it includes provides some explanation, such as "[The claimant] has no right to this property because I bought it from him and paid him its price. And this document notarizes this with witnesses." In this case, the defendant is making a claim based on a document whose witnesses are absent, which makes it like situations discussed above. [The magistrate] has more authority and increased leeway for action and the right to use [evidence], as the indication here is stronger and the circumstantial evidence (*shāhid al-ḥāl*) clearer. If ownership is not established by the document, [the magistrate] can intimidate either party according to what the circumstances entail. He should summon the witnesses if possible, setting an appointed time for them to appear, and he should refer the two parties to intermediary [officials]. If this results in a mutually agreed-upon settlement, then the case is finished. He can omit hearing the witnesses once they have arrived.

If the case is not concluded through reconciliation and settlement, [the magistrate] focuses on investigating the matter by consulting the two parties' neighbors and those living around the disputed property. At the time of such investigation, the magistrate of the grievance tribunal can choose one of three dispositions depending on what his reasoning leads him to on the basis of the indications and circumstantial evidence (*shawāhid al-ḥāl*); [first], he can remove the disputed property from the defendant's control and surrender it to the plaintiff until some direct evidence of a sale is produced; [second], he can place it in the care of a trustworthy administrator who can safeguard its productive use for the party with legal right to it; or, [third], he can affirm its belonging to the defendant but sequester it from him, assigning a trusted administrator to preserve its productive use. The magistrate of the grievance tribunal takes one of these three courses of action so long as one of two situations obtain, either the truth emerges through investigation or the witnesses come to present their testimony. If there is no hope of them doing so, then the case should be settled between the two parties. If the defendant asks for the plaintiff to be made to swear an oath, [the magistrate] should have him do so, and this would be dispositive for the matter between them.[43]

And the second type is when the [defendant's] denial includes no explanation, [such as] his saying, "This property is mine, and this claimant has no right to it." And the testimony [found in] the document against the claimant can be of two types, either to his admission that he has no right to it or to his admission that it is the property of the defendant. [In both cases], the property is affirmed as belonging to the defendant and

[43] M: *battan baynahum* / Y: *banā'an baynahum*.

cannot be stripped from him. As for sequestering the property from him, with its productive use and yield protected, for the duration of the investigation and [referring it to] intermediaries, this should be considered depending on the circumstantial evidence pertaining to the two parties and the reasoning of the magistrate of the grievance tribunal until a ruling is reached between the two parties.

As for the third situation, it is that the witnesses of the document opposing the claim are present but not vetted as upstanding, in which case the magistrate of the grievance tribunal deals with them in the manner we presented on the plaintiff's side in terms of their three possible situations. And he should take care to consider whether the denial includes an explanation or not. And the magistrate of the grievance tribunal acts according to what we described earlier, relying on his best judgment on the basis of circumstantial evidence (*shawāhid al-ḥāl*).

The fourth situation is that the document's witnesses are upstanding but deceased, so it provides no ruling except that it can be used to intimidate [a party] as called for by the investigation and then in arriving at a final ruling on the basis of what the document contains in terms of explained or unexplained denial.

The fifth situation is that the defendant counters with a written document signed by the plaintiff and containing evidence that proves his falsehood in his claim, in which case the magistrate acts according to what we described earlier regarding signed documents. And [the use of the document] to intimidate is done after consideration of the circumstances of the case.

And the sixth situation is that an accounts leger is produced regarding the claim, and it proves the falsity of the claim. In this case, the magistrate acts according to what we described earlier in relation to accounts legers. And intimidation, investigation and continuation of the case should be done in consideration of the circumstances of the case. Then the ruling is made if there is no hope of another way to resolve the dispute.

§

Section: If the claim is not accompanied by anything strengthening or weakening it, then the magistrate of the grievance tribunal should take care to look into the condition and nature (*ḥāl*) of the two disputants and what seems more probable (*ghalabat al-ẓann*). The conditions of the two parties' [situations] must be one of three types: first, the preponderance of probability (*ghalabat al-ẓann*) favors the plaintiff; second, it favors the defendant; and, third, the two are equal in this regard. And what this preponderance of probability influences regarding one of the two parties is the intimidation used against them and the intensity of investigation. It is not the basis of a ruling on the case.

If the preponderance of probability lies with the plaintiff and doubt is directed at the defendant, this could be because of three reasons. First, that the plaintiff, though he

lacks proof to produce, is weak and deemed pliant, while the defendant is influential and powerful. If [the plaintiff] has claimed that [the defendant] expropriated a house or property, in such cases it seems most probable that someone so docile and subordinated would not dare to launch a claim against someone so influential and strong [i.e., without good reason].

Second, that the plaintiff is a person well known for honesty and trustworthiness, while the defendant is well known for lying and betrayal. The preponderance of probability is thus that the plaintiff is truthful in his claim.

Third, that their circumstances and conditions are equivalent, except that it was known that the plaintiff had existing control or possession over [the disputed item], while there is no known reason for the defendant to have novel control or possession.

In these three situations, the magistrate of the grievance tribunal should pursue two courses of action. First, he should intimidate the defendant due to the suspicion that has been cast upon him. Second, he should ask him about how he came into a degree of possession and control over the disputed item. Mālik b. Anas, may God be pleased with him, allowed the judge to do this in his school of law if there is suspicion. So the magistrate of the grievance tribunal is even more enabled to do so.

And it may be the case that the defendant, if they are of high status, recoils at being placed on equal footing with his disputant in court and thus concedes the claim of his opponent without contest. Such is the story of [the Abbasid caliph] Mūsā al-Hādī. One day he sat for the grievance tribunal, with [the scribe] ʿUmāra b. Ḥamza[44] standing beside him in a place of honor. A man among those who had come to present their grievances came forward, claiming that ʿUmāra had expropriated land of his. Al-Hādī had ʿUmāra sit with the man for a trial. [ʿUmāra] said, "O Commander of the Faithful, if the property is his, then I will not oppose him in the matter. If it is mine, then I grant it to him rather than sell off my place in the court of the Commander of the Faithful."

And it may be that the magistrate of the grievance tribunal subtly restore to the complainant their right while preserving the dignity of the party complained against[45] or that he arrange it indirectly so as to preserve someone's dignity from the accusation of prejudice or depriving people of their rights. Such a case is what ʿAwn b. Muḥammad reported regarding people from the Marghāb River by Basra. They brought a dispute regarding [the caliph] al-Mahdī to his judge, ʿUbaydallāh b. al-Ḥasan al-ʿAnbarī.[46] But neither the caliph nor al-Hādī after him surrendered [the disputed land] to them. Then [Hārūn] al-Rashīd came, and the people came to present the complaint to him. [His

[44] ʿUmāra b. Ḥamza Ibn Maymūn, a well-known scribe and governor, d. 199/814.
[45] Y's text is much clearer in meaning here, including the additional phrasing *al-mutaẓallam minhu*, which M omits. M instead includes what is likely a dittography of the word *maṭlūb*, which appears again several words later.
[46] A famous judge, d. 168/785.

vizier] Jaʿfar b. Yaḥyā [al-Barmakī][47] was the magistrate of the grievance tribunal. But [the caliph] still did not return the land to them. So Jaʿfar b. Yaḥyā purchased it from al-Rashīd for twenty thousand dirhams and granted it to those people. He said, "I did this so that you would know that the Commander of the Faithful is obstinately unyielding in his right, so his slave purchased it and gifts it to you all." Ashjaʿ al-Sulamī[48] recited, regarding this incident:

> The floating comet rendered it with his own hands, while its people
> Were in the station of the Unarmed Star [i.e., Spica].
> They were certain they had lost it, that they would soon perish,
> Lost to fate on a day predicament.
> He pried it away for them when they were,
> Held to their fate between the chest and throat.
> No one could have pried it away but him,
> The noble man alone can resolve the impossible.

It is possible that what Jaʿfar b. Yaḥyā did came from his own initiative in an effort to shield al-Rashīd from engaging in wrongdoing. Or al-Rashīd arranged this so that neither his father nor his brother would be associated with injustice, and this seems more likely. Whichever was the case, the people were restored their right, while dignity was preserved and humiliation spared.

If the preponderance of probability lies with the defendant, this could be because of three reasons. The first is that the plaintiff is well known for wrongdoing and betrayal, while the defendant is well known for fair dealing and trustworthiness. The second is that the plaintiff is a degenerate lowlife while the defendant is free from such vices and virtuous. In this case, he can be required to swear an oath due to his iniquity. The third is that there is an accepted reason for the defendant to have taken possession or control of the disputed item, while there is no evident reason for the plaintiff's control or possession.

In these three situations, the preponderance of probability lies with the defendant, while the plaintiff is the object of suspicion. The school of Mālik, may God have mercy on him, is that, in such cases, if the person's claim involves an existing item, the [judge] should not hear it until some reason is given explaining the claim. If the claim involves money that is owed,[49] the judge should not hear it until the plaintiff has provided direct evidence that he had engaged in commercial relations with the defendant. And al-Shāfiʿī and Abū Ḥanīfa, may God be pleased with them, did not hold this regarding judicial procedure.[50] **As for the procedure of the grievance tribunal, the subject is dealt with**

[47] One of the famous Barmakid dynasty of viziers, d. 187/803.
[48] A poet close to the Barmakids, d. *circa* 196/811.
[49] The al-Baghdādī edition has *māl al-ama*, which makes no sense, while the Enger edition and Y have *māl al-dhimma*.
[50] Y lacks this sentence but includes, "and the likes of this have been reported from Aḥmad [b. Ḥanbal]."

according to what is permissible, not what is required. Such things are thus permitted when suspicion arises or due to obstinacy. And the magistrate can engage in more intensive investigation using those means that will arrive at the truth, while still respecting the defendant, according to the increased latitude in procedure. If the matter reaches the point of both sides swearing oaths, which is the final stage before arriving at a final ruling and which neither the judge nor the magistrate of the grievance tribunal can deny once one side has requested it despite threats and admonition, if the [plaintiff] chooses to separate his various claims and to swear oaths on some of them during different sessions due to his stubbornness and lowly conduct, what a judge's procedure would require would be not denying this separation of claims and oaths. The magistrate of the grievance tribunal, by contrast, can instruct the claimant to group all his claims together once his obstinacy becomes evident and have the disputant swear all their oaths in one instance.

If the two disputants are in equipoise, with corresponding direct evidence (*bayyina*), and no indication or probability makes the proof of one party preferrable to the other, then the magistrate must address each with moral admonition (*ʿiẓa*). This applies equally to the judge (*quḍāt*) and the magistrate of the grievance tribunal.[51] After such admonition, what distinguishes the magistrate of the grievance tribunal [from the judge] is the use of intimidation (*irhāb*) against the parties because of their equivalent arguments, then investigating the basis of the claim and how the property changed possession. If the investigation turns up which party in is the right, this dictates the ruling. If the investigation does not yield what settles the dispute, the magistrate should refer them to intermediary officials drawn from respected neighbors or clan elders. If they cannot succeed in resolving the dispute, **then it must be settled by a judge**. This is the final stage of their matter and is determined by what the magistrate sees as appropriate to settle the case originally brought before him.

§

It may be the case that the magistrate of the grievance tribunal is brought issues of particular legal difficulty or complexity, **and those present in the session and scholars there might guide him and elucidate the matter**. He should not condemn their initiative or be too haughty[52] to act on it in resolving the case.

Such is the case in what al-Zubayr b. Bakkār reported from Ibrāhīm al-Ḥarāmī, from[53] Muḥammad b. Maʿn al-Ghifārī, that a woman came to ʿUmar b. al-Khaṭṭāb, may God be pleased with him, and said, "O Commander of the Faithful, my husband fasts all day and prays all night. I'd hate to complain about him if he is acting in obedience of God." ʿUmar

[51] The word *quḍāt* is missing in the al-Baghdādī edition of M, but it is present in the Enger edition, and the sentence makes no sense without it.
[52] M: *yastakthiru* / Y: *yastakbiru*.
[53] The al-Baghdādī edition incorrectly has *bin* instead of *ʿan*, which is found in Enger.

replied, “What an excellent husband you have.” She repeated her complaint, but he merely repeated his reply. Then Kaʿb b. Sūr al-Asadī [sic; his actual name is al-Azdī][54] said to him, “O Commander of the Faithful, this woman is complaining to you about her husband being distant from her by night.” ʿUmar, may God be pleased with him, replied to him, “As you have understood her words, judge you between them.” Kaʿb said, “Bring me her husband,” and he was brought forth. He said, “Your wife is complaining about you.” The husband replied, “Regarding food or drink?” Kaʿb said, “Neither one.” Then the wife recited:

O wise judge, guided by prudence,
His prayer mat has enticed my partner away from my bed,
His worship has rendered him an ascetic in the sheets,
He sleeps there neither by day nor night.
I give him no praise as pertains to ladies,
So render judgement, O Kaʿb, and not hesitate.

The husband retorted:

Yes, I’ve been made an ascetic in her bed and bridal chamber,
But I’m a man dumbstruck by what was revealed
in the Chapter of the Bees and the Seven Long Suras.
The Book of God puts fear of weighty things in the heart.

Kaʿb answered:

She has rights over you, man,
Her share of four, which all reasonable folk know.
So give her all that, and leave off the excuses.

Then [Kaʿb] said to the man, “God has allowed two or three or four wives for you. So you have three days and nights for worshipping your Lord. And she gets a day and a night.” ʿUmar said to Kaʿb, may God be pleased with him, “I don’t know which of your two accomplishments I’m more impressed by, that you understood her concerns or the ruling you rendered for them. Go now, for I’ve appointed you judge of Basra.”

This ruling by Kaʿb and ʿUmar’s enforcement was a ruling according to what was permissible rather than what was obligatory, since the husband was not strictly required to give his wife one night nor to respond to her enticements to bed provided that he had, at some point, consummated the marriage.[55] **This shows that the magistrate of the**

[54] A Successor and judge, d. 36/656.

[55] This is the main Shāfiʿī opinion on this issue, while the Ḥanbalī school requires the wife’s sexual needs be met at least once every four months. The Mālikī school requires the husband to tend to his wife’s needs unless there is some mitigating circumstance, otherwise a judge has grounds to end the marriage. The Ḥanafī school has no clear

grievance tribunal should rule by what is permissible rather than what is strictly required.

§

Section on the delegation (*tawqīʿāt*) of cases by the magistrate of the grievance tribunal:

If the magistrate of the grievance tribunal delegates cases brought before him by a complainant, the official to whom he delegates it can be one of two sorts: either he is authorized by his position (*wāliyan*) to rule on it or he is not.

If he already has a mandate authorized by his position, such as the case being assigned to a judge (*qāḍī*) to adjudicate, then this delegation can entail one of two possibilities: either it grants permission to render a ruling, or it grants permission to investigate the case and involve intermediary officials. If it grants permission to render a ruling, then ruling between the parties is permitted for the official on the basis of their original mandate (*wilāya*). The delegation merely emphasizes this, and this mandate to render a ruling would not be affected by any limitations in its phrasing even if it only granted permission to engage in investigation in the form [of the dispute] or to arbitrate between the two disputants.

If, on the other hand, the delegation restricted the mandated official from ruling on the case, he should not render a ruling between the parties. [In this situation], the restriction has the effect of removing the official from [the position] of rendering a ruling between those two parties while leaving his authority intact for all other cases. This is because, since mandated authority (*wilāya*) can be of two types, general or specific, removal of such authority can also be general or specific.

If the magistrate's act of delegation did not prohibit the official delegated to from rendering a ruling on the case when[56] it tasked him with investigation,[57] then some have held that his procedure (*naẓar*)[58] remains as it generally would be in terms of permitting him to render a ruling between the parties. This is because being mandated to perform part of one's normal functions is not a prohibition from performing others. Others have held that it does entail such a prohibition. Still others have held that, rather, the official is prohibited from rendering a ruling and is restricted to what the delegation specified in terms of investigation and arbitration on the basis of what is implied (*faḥwā*) by the delegation.

---

rule, only obliging sex frequently enough to maintain the wife's chastity. See Ibn Ḥajar, *Fatḥ al-bārī*, 9:373; Wahba al-Zuḥaylī, *Mawsūʿat al-fiqh al-islāmī* (Damascus: Dār al-Fikr, 2010), 8:318.

[56] The Baghdādī edition of M and Y both have *ḥīn* here (when), while Enger's M has *ghayr*, which seems to make no sense.

[57] Y adds in *wa'l-wasāṭa* (and involving intermediaries) here.

[58] Baghdādī's edition of M has *nadhar*, while Enger's M and Y have *naẓar*.

It is then determined whether the delegation mandated arbitration or involving intermediaries. If it did, the official is not required to again take up the case after such arbitration. If, however, the delegation mandated investigating the case, the official is required to follow up, since the delegation was a request for information regarding the case, and the official must provide a reply [to the magistrate]. These are the rules regarding a delegation to someone already holding a mandate of authority.

As for the second situation, namely that the magistrate delegates to an official who does not have an existing mandate of authority (*wilāya*), such as delegating a case to a jurist or expert witness (*shāhid*), then this delegation would be one of three types: first, to investigate the form (*ṣūra*) of the case; second, to engage in arbitration or involve intermediaries; or, third, to render a ruling.

If the official is delegated to investigate the form of the case, he should do so and conclude whether and what he could provide the magistrate as acceptable testimony to arrive at a ruling. If the official concludes that nothing of this sort exists, the evidence can still provide information that, **while not admissible as testimony, can be used in the grievance tribunal as the sort of evidence indicating that one of the two parties merits intimidation or further investigation.**

If the delegation is for arbitration or involving intermediaries, then the official should do so. And this does not strictly depend on what the delegation specified in terms of arbitration and mediation, since arbitration and involving intermediaries does not required official appointment (*taqlīd*) or mandated authority (*wilāya*). Rather, delegating arbitration entails[59] appointing an intermediary chosen by the delegator and bringing the two parties before him of their own volition (*ikhtiyāran*).[60] If the arbitration or involvement of intermediaries results in a resolution between the two disputants, the official is not required to follow up. He would testify to this resolution if he were called to do so. If the arbitration and mediation does not result in a resolution, the official can testify to what both sides acknowledged in his presence and provide this to the magistrate of the grievance tribunal if the two parties again bring their case before it. He is not, however, required to provide this to the magistrate if the two parties do not return.

If the delegation is to render a ruling for the two parties, this is a mandate in which one must consider the specific language of the delegation, so that the official's actions will accord with what is required. In such a case, the delegation can be one of two forms.

---

[59] M has *yufīdu*, while Y has *yuqayyadu* (is limited by), orthographically differing only in a dot. In both cases, the text could be read with a similar meaning.

[60] While M has *ikhtiyāran*, Y has *ijbāran*, meaning by "by compulsion." The two words are orthographically similar, so it is not clear if this is al-Māwardī misreading Abū Yaʿlā's text, al-Māwardī intentionally altering it, or if some change was introduced into one of the two texts by copyists. Of course, the meaning is dramatically different.

The first is that the official is charged with granting the disputant's request, in which case he should consider what he is asking regarding the wrong he claims, and the case is limited to that issue. If the disputant requests arbitration or an investigation into the case, the mandate of delegation requires this of [the official] and is limited to that.

Regardless of whether the mandate of delegation takes the form of a command, like "Grant the disputant's request," or in a comment like, "What is your opinion on addressing his request?" this is an act of delegation. It does not entail authorization that would result in a binding ruling, so it is a less serious matter.

If the complainant requests a ruling on the issue of dispute, the disputant must be named and the issue of contention specified in order for the authority to rule on the matter to be competent. If the disputant is not identified or the issue of contention not specified, there is not competent authority to rule on the issue, since [the official in question] has neither a general mandate of authority to apply broadly nor a specific mandate, as the specifics are unknown. If the complainant names his disputant and specifies the issue of contention, the mandate of delegation should be referred to regarding granting the complainant's request. If the delegation took the form of a command and then the official acted to respond to the request and grant it, then the official's mandate of authority and his ruling on the case is valid. And if the delegation took the form of seeming only to ask the official to inquire into the case and consider granting the request, in governmental matters (*aʿmāl sulṭāniyya*) such a delegation has the effect of a command, as is well known in customary usage. As for rulings regarding religious obligations (*aḥkām dīniyya*), a party among the jurists have allowed this in light of custom and consider mandated authority to be legitimate in this case. Another group has not allowed it and does not consider mandated authority to be valid in this case without an explicit command accompanying it that specifies the empowerment of the official for this purpose.

If the complainant had requested a delegation of authority to issue a ruling for the disputants, and the magistrate charged the delegate with granting this request, those who consider custom definitive in this would consider the mandated authority valid, while those who only looked at the phrasing of the delegation would not,[61] because the party has asked for a delegation of authority to rule and not for the ruling itself.

The second situation for delegations of authority is that the official is charged with responding to the disputant by granting them what they had asked. So he takes the matter up anew according to its merits (*mā taḍammanahu*), and what the delegation contains or specifies is what defines the nature of the delegated authority. If this is the

[61] Y has the subjects in question approving (*ṣaḥḥaḥa*) the *wilāya* here, while M has the *wilāya* as the subject of the intransitive *ṣaḥḥat*. Y seems grammatically sounder in this context.

case, there can be three possible situations: a situation of full [authority], a situation of permissibility, and a situation that is neither of these two cases.[62]

As for the situation in which the delegation of mandated authority is full and total (*kamālan*), this includes two elements. The first is the mandate to take up the case. The second is the mandate to arrive at a ruling. It would involve [the magistrate] stating, "Look into this matter between the complainant and their disputant and issue a ruling for the two parties according to what is right (*al-ḥaqq*) and what the Sacred Law (*al-sharʿ*) requires." If this is the case, then this course of action is permitted, **since rulings must be according to what the Sacred Law obliges anyway.** This statement in acts of delegation is merely descriptive. It does not constitute a [new] condition. If the act of delegation includes both looking into the case and ruling on it, this is a full delegation that constitutes a legitimate appointment and authorization.

As for the situation in which the act of delegation is permissible (*jā'iz*) while not reaching the level of being complete, this would be if it included the mandate to issue a ruling but not to look into the dispute, in which case [the magistrate] would state in his delegation, "Issue a ruling between the complainant and their disputant," or, "Judge between them." The mandate of authority would be considered legitimate in this situation, since judging and issuing a ruling only take place after consideration of the case. So the mandate to issue a ruling implies a mandate to look into the case, since the former necessitates the latter.

As for the situation in which the delegation is neither complete nor permissible, this is if the magistrate states in his act of delegation, "Look into the issue between them." Such a delegation does not constitute an authorized mandate, because looking into a dispute might entail arbitration or involving intermediaries, which is permissible, or it might entail issuing a ruling that would follow on that. And both of these are equally possible [interpretations]. As a result of this ambiguity, this does not constitute an authorized mandate. But if the magistrate states, "Look into the issue with an aim of ascertaining the truth (*bi'l-ḥaqq*)," some hold that this would constitute an authorized mandate, since this truth or right is entailed in the statement. But others hold that no such mandate is constituted, since mutually agreed resolution (*ṣulḥ*) and arbitration might also both be entailed, even if not necessarily. And God knows best.

[62] The Baghdādī edition of M has *yakhlū ʿan al-amrayn*, while Enger has *yakhruju ʿan al-amrayn*. Y has *takhlū ʿan al-amrayn*.