

IBADĪ MARITIME LAW IN THE INDIAN OCEAN: TRANSPORT, TRADE, AND TAXES IN THE 2ND-3RD/8TH-9TH CENTURIES

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Abstract

Seafaring and trade across the Indian Ocean have played a pivotal role for Oman and its scholars. Islamic law compendia are reflective of and an important source of the material culture of their times. They discuss all aspects of human life, questions of personal status, trade, and international relations. Despite the exposure of Oman and its scholars to the sea and related legal cases, maritime law in the Ibādī *fiqh* encyclopedias is a neglected field of research. This study aspires to close a gap in the literature. It focuses on the earliest extant Omanī *fiqh* encyclopedias and other relevant material of the 2nd-3rd/8th-9th centuries, mainly the *Kitāb Jāmiʿ Abī l-Ḥawwārī* (alive in 272/885), *Kitāb Jāmiʿ al-Faḍl ibn al-Ḥawwārī* (d. 278/891), and *Jāmiʿ Ibn Jaʿfar al-Izkawī* (alive in 277/892), with references to later sources, primarily the *Kitāb Bayān al-sharʿ* of Muḥammad ibn Ibrāhīm al-Kindī (d. 508/1115), the *Muṣannaf* of Abū Bakr al-Kindī (d. 557/1162), and others. This research analyses the available material to identify the earliest possible source material and authorities of dicta on Ibādī maritime law while referencing later material for clarification. Case studies on different questions, such as hiring ships and vessels for transportation, contract work, shipwreck and jettison, taxation, and

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persons missing at sea, are analyzed with respect to the sea as a spatial factor that may (or may not) impact Islamic legal rule.

Key Words: Ibādī school, maritime law, Indian Ocean, taxation, transportation, shipwreck

Introduction

Islamic maritime law is still a neglected field. Although some fundamental research exists on Muslim trade, seafaring, and its cultural context in the Indian Ocean, very little has been published on the actual legal rules and codices by which this trade was governed. Some attention has been given to the Mediterranean and Mālikī schools, while the culturally more diversified Indian Ocean is still subject to research.¹

Sea trade between Oman and regions along the Gulf and Indian Ocean littoral was already established when Oman became Muslim, and it must have been governed by certain rules and provisions. Islam did, however, introduce its own rules and regulations to trade, contracts, taxation, and personal status, along with adding entirely new factors, such as *ḥajj*, *daʿwah*, and *jihād* to matters of the sea. The Islamic call followed the trade routes to Africa, India, and Southeast Asia to China; Muslim communities formed along the coast of the Indian Ocean, while political power consolidated, secured, and pacified them. The growing cultural unity with the spread of Islam along the Indian Ocean shore must have had an impact on maritime laws and their unification in the Indian Ocean.

¹ See, e.g., Hassan S. Khalilieh, *Admiralty and Maritime Laws in the Mediterranean Sea (ca. 800-1050): The Kitāb Akriyat al-Sufun vis-à-vis the Nomos Rhodion Nautikos* (Leiden & Boston: Brill, 2006); Hassan S. Khalilieh, *Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought* (Cambridge - New York: Cambridge University Press, 2019); George Fadlo Hourani, *Arab Seafaring in the Indian Ocean in Ancient and Medieval Times* (New York: Octagon Books, 1951); for more recent research, see Mahmood Kooria, “Zones of Origins: The Formation of Islamic Law in the Indian Ocean Littoral, c. 615-1000 CE”, *Islamic Law in the Indian Ocean World: Texts, Ideas and Practices*, ed. Mahmoud Kooria - Sanne Ravensbergen (London: Routledge, 2021). Kooria remains very vague concerning the actual law and its documentation.

Sohar, Oman's capital and most important port, was the gateway to trade, *da'wah*, and international relations. Established Muslim (trading) communities along the littoral of the Indian Ocean saw an influx of judges and teaching authorities from their places of origin. It is to be expected that Islamic legal rules, generally, and probably partly in the garb of the early Ibāḍī Omanī *fiqh* authorities, were received in these places.² This study attempts to present and analyze some of the available legal material in relation to the sea in the early Omanī Ibāḍī *fiqh* encyclopedias as a point of departure in the study of Islamic maritime law.

A Note on the Source Material

Compared with their Sunnī and Zaydī counterparts, Omanī Ibāḍī *fiqh* encyclopedias yield considerably more material on maritime law. Although more research, particularly in Shāfi'ī and Zaydī *fiqh* compilations, is needed to meticulously assess and compare the available material, the sheer abundance of maritime legal cases in the Omanī *fiqh* legacy is strikingly obvious. This phenomenon may have its roots in geographical, political, or sociological reasons; we may cautiously suggest that geographical exposure to the sea paved the way to preoccupation with maritime cases, while the relative political isolation of the school (and its region) facilitated different internal mechanisms.

The second to the third/eighth to the ninth centuries in Oman were a historically decisive era in which the sea and sea trade were vital components. The political authority of the Imamate extended to Socotra and the East African coastline. The events and scholarly presence in this era are particularly well documented (in historical material such as Nūr al-Dīn al-Sālimī's *Tuḥfah*, the Omanī *siyar*, and the *fiqh* encyclopedias themselves).

² Historical sources mention several Islamic communities with an Omanī imprint in India (Malabar), Sri Lanka, and China, in addition to the East African coastline, see Muḥammad ibn Nāṣir al-Mundhirī, *Tārīkh Ṣuḥār al-siyāsī wa-l-ḥaḍārī min ḡubūr al-Islām ḥattā nibāyat al-qarn al-rābi' al-bijrī* (Beirut: Dār al-'Ulūm al-'Arabiyyah li-l-Ṭibā'ah wa-l-Nashr, 2008), 90ff; Ram Prakash Anand, "Maritime Practice in South-East Asia until 1600 A.D. and the Modern Law of the Sea", *The International and Comparative Law Quarterly* 30/2 (1981), 440-454.

The third/ninth-century encyclopedias, the *Jāmiʿ al-Faḍl*,³ *Jāmiʿ Abī l-Ḥawwārī*,⁴ and *Jāmiʿ Ibn Jaʿfar al-Izkawī*⁵ may be considered the

³ Abū Muḥammad al-Faḍl ibn al-Ḥawwārī al-Sāmī al-Izkawī, *Jāmiʿ al-Faḍl ibn al-Ḥawwārī* (Muscat: Wizārat al-Turāth al-Qawmī wa-l-Thaqāfah, 1406/1985). Al-Faḍl ibn al-Ḥawwārī (d. 278/891) was a student of Muḥammad ibn Maḥbūb, one of the outstanding Omani scholars of his time and a contemporary of Imām al-Muḥannā ibn Jayfar (226-237/841-852) and Imām al-Ṣalt (237-272/852-885). He was involved in the political events that followed the forced abdication of al-Ṣalt, opposed the newly sworn-in Imām ʿAzzān ibn Tamīm, and was subsequently killed (together with al-Ḥawwārī ibn ʿAbd Allāh) by the Imām's troops near Sohar in 278/891. He is the author of *Kitāb al-Jāmiʿ*; Muḥammad Ṣāliḥ Nāṣir - Sulṭān ibn Mubārak al-Shaybānī, *Muʿjam aʿlām al-Ibāḍīyyah min al-qarn al-awwal al-bijrī ilā l-ʿaṣr al-ḥāḍir, qism al-Mashbriq* (Beirut: Dār al-Gharb al-Islāmī, 1427/2006), 345-346; Martin Custers, *al-Ibāḍīyya: A Bibliography Volume 1: Ibāḍīs of the Mashbriq*. Hildesheim: Georg Olms, 2016), 1/192ff. Al-Sālimī has a lengthy abstract on al-Faḍl ibn al-Ḥawwārī, his rebellion against ʿAzzān ibn Tamīm, and the scholars' evaluation of this action; Nūr al-Dīn ʿAbd Allāh ibn Ḥumayd al-Sālimī, *Tuḥfat al-aʿyān bi-sīrat abl ʿUmān* (al-Sīb: Maktabat al-Imām Nūr al-Dīn al-Sālimī, 2000), 250ff.

⁴ Muḥammad ibn al-Ḥawwārī al-Aʿmā Abū l-Ḥawwārī, sometimes referred to as al-Ḥawwārī Muḥammad ibn al-Ḥawwārī; alive in 272/885, probably died early in the 4th/10th century. Based in Nizwā, he is considered the most important among the famous Omani scholars of the 3rd/9th century. He was a student of Muḥammad ibn Maḥbūb but mainly studied under Abū l-Muʿthir al-Ṣalt ibn Khamīs al-Kharūṣī, and he also learned from Muḥammad ibn Jaʿfar al-Izkawī. Among his extant works are the *Jāmiʿ Ibn al-Ḥawwārī*, the *Tafsīr khamsmīʿat āyāt fi l-aḥkām* (both in print), and *Ziyādāt ʿalā Jāmiʿ ibn Jaʿfar* (Nāṣir - al-Shaybānī, *Muʿjam aʿlām al-Ibāḍīyyah*, 379-380; Fahad ibn ʿAlī al-Saʿdī, *Muʿjam al-fuqabāʾ wa-l-mutakallimīn al-Ibāḍīyyah: Qism al-Mashbriq min al-qarn al-awwal al-bijrī ilā bidāyat al-qarn al-khāmis ʿasbar al-bijrī* (Muscat: Maktabat al-Jīl al-Wāʿid, 2007), 2/66ff). According to Fahad al-Saʿdī, the original work of Abū l-Ḥawwārī is lost, and the printed version (Muscat, 1985) is the work of a later scholar and goes back to *al-Majmūʿ min jawāb Abī l-Ḥawwārī* with addition of the compiler from other sources (of Abū l-Ḥawwārī; see al-Saʿdī, *Muʿjam al-fuqabāʾ*, 2/67. This may explain the presence of the legal dicta of Abū Saʿīd al-Kudāmī (305-361/918-972). The printed version of the *Jāmiʿ* still expresses the teachings that were disseminated in Ibāḍī circles in Oman; see Custers, *al-Ibāḍīyya: A Bibliography*, 1/189f.

⁵ Abū Jābir Muḥammad ibn Jaʿfar al-Izkawī (alive in 277 AH) is the author of one of the earliest *fiqh* encyclopedias (*al-Jāmiʿ*, also called “Qurʾān al-athar”); he was a

earliest available sources on Ibāḍī maritime law or, more humbly, legal cases (*masā'il*) regarding the sea.

The third/ninth century was particularly characterized by Omani activity in the Indian Ocean. Sohar, as capital of the Imamate, with political-scholarly figures such as al-Imām al-Ṣalt and his chief judge Muḥammad ibn Maḥbūb,⁶ set the pace for centuries to come. His

disciple of Muḥammad ibn Maḥbūb and was supported Mūsā ibn Mūsā and Rāshid ibn al-Nazar in the deposition case of al-Imām al-Ṣalt. Abū Jābir was deaf and one of the three eminent scholars of *fiqh* at his time ("Oman at that time referred to the deaf [Ibn Ja'far], the limping [*al-A'raj*: Nabḥān ibn 'Uthmān], and the blind [*al-A'mā*: Abū l-Mu'thir] for knowledge"). Al-Izkawī was governor (*wālī*) of Sohar, the most important harbor and capital of the state in the time of al-Imām al-Ṣalt but was either terminated or resigned himself after two months; see Custers, *al-Ibāḍiyya: A Bibliography*, 212ff; al-Sa'dī, *Mu'jam al-fuqahā'*, 2/53ff. He preserved the responses of Muḥammad ibn Maḥbūb, Sa'īd ibn Maḥraz, and al-Waḍḍāḥ ibn 'Uqbah. Both al-Ḥawwārī and Abū l-Ḥawwārī ibn al-Ḥawwārī acquired knowledge from him (the latter commented on his *Jāmi'*). The original version of the *Jāmi'* is lost, but the book exists in redacted versions with additions. The printed version is *Tabḍīb al-atḥār fī talkḥiṣ Jāmi' al-shaykh Muḥammad ibn Ja'far* by al-Sayyid Muhannā ibn Khalfān al-Būsa'īdī; see al-Sa'dī, *Mu'jam al-fuqahā'*, 2/55.

- ⁶ Abū 'Abd Allāh Muḥammad ibn Maḥbūb al-Ruḥaylī was an Omani scholar of Qurashite origins whose grandfather, al-Ruḥayl ibn Sayf, was among the first propagators of the Ibāḍī movement in Basra. Muḥammad ibn Maḥbūb was among the scholars who gave al-Imām al-Ṣalt the pledge of allegiance in 237/851. He was the *qāḍī* of Sohar, which was then the capital of the imamate, during al-Ṣalt's imamate (from 249/863 to his death in 260/874) and is considered by generations of Ibāḍī scholars an influential figure in the field of Islamic jurisprudence (Nāṣir - al-Shaybānī, *Mu'jam al-ʿulam al-Ibāḍiyyah*, 425-426; Farḥāt ibn 'Alī al-Ja'birī, *al-Tadwīn al-fiqhī: al-Imām Muḥammad ibn Maḥbūb namūdḥaf*^m: *A'māl nadwat taṭawwūr al-ʿulūm al-fiqḥiyyah* (Muscat: Wizārat al-Awqāf wa-l-Shu'ūn al-Dīniyyah, 1422/2002), 17-71; Farḥāt ibn 'Alī al-Ja'birī, *Shakhṣiyyāt Ibāḍiyyah* (al-Sīb: Maktabat al-Ḍāmīrī li-l-Nashr wa-l-Tawzī', 2010), 83-84. For his scholarly and political role, see Badriyyah bint Muḥammad ibn Shāmis al-Nabḥānī, *Al al-Ruḥayl wa-dawrubum al-siyāsī wa-l-fikrī fī 'Umān min al-qarn 3h/8m – 4h/10m* (Muscat: Sultan Qaboos University, Ph.D. Dissertation, 2017). Al-Shaybānī lists a *sīrah fī l-siyāsah al-shar'īyyah* (contained in *Siyar wa-jawābāh*) under the authorship of Muḥammad ibn Maḥbūb. Sulṭān ibn Mubārak al-Shaybānī, *Amālī l-turāth: Naẓarāt naqḍiyyah wa-qirā'āt fī jadīd al-turāth al-'Umānī makhṭūṭihī wa-maṭbū'ihī* (Muscat: Dār al-Dhākirah, 2015), 1/46; see Custers, *al-Ibāḍiyya: A*

teachings and the practices of Amīr al-Sāḥil at the time may have exerted influence far beyond the shores of Oman, with the Omanī fleet as a protective force against merchant ships (as some legal cases indicate). These encyclopedias refer largely to his authority and the preceding generations of scholars, governors, and military leaders. As is typical of the time, many discussed cases are real-life responses and events that were decided by the authorities. The *dicta* (*aqwāl*) of al-Waḍḍāḥ ibn ʿUqbah, who was involved in military action in the Indian Ocean, and Abū Marwān, who was a scholar and governor of Sohar, the capital and most important port, are worth mentioning in this context.⁷ The dicta on maritime laws are reflective of the legal rules practiced in the era of the first Imamates in Oman.

A note on these early sources may be called for. *Jāmiʿ al-Faḍl*, *Jāmiʿ Abī l-Ḥawwārī*, and *Jāmiʿ Ibn Jaʿfar* in the current printed versions that I relied on are most likely not the original works of these scholars but rather redacted versions by following generations of scholars with additions.⁸ The interdependence of these sources needs to be assessed in terms of their totality. They can, however, be considered a reliable source of the legal dicta of Omanī Ibāḍī scholars on maritime rules in the 2nd-3rd/8th-9th centuries. References in *Jāmiʿ Abī l-Ḥawwārī* to Muḥammad ibn Saʿīd (al-Kudamī), who succeeded these scholars chronologically, may be due to later add-ons to the original writing.⁹ Later sources, such as the *Kitāb Bayān al-sharʿ* of Muḥammad ibn

Bibliography 1/441ff; see also Anke Iman Bouzenita, “A Reading in the Applied Ibāḍī Fiqh of International Relations: The Directive of Imām al-Ṣalt (d. 275/888) to His Army Concerning Socotra”, *Ilabyat Studies* 10/1 (2019), 7-45.

⁷ Al-Sālimī mentions the generations of scholars who disseminated knowledge in Oman; see Nūr al-Dīn al-Sālimī, *Tuḥfat al-aʿyān*, 83.

⁸ Fahad ibn ʿAlī ibn Hāshil al-Saʿdī, *Ḥaqāʾiq taḥta l-mijbar* (1) *Jāmiʿ al-Faḍl ibn al-Ḥawwārī* (n.p., n.d.); Fahad ibn ʿAlī ibn Hāshil al-Saʿdī, *Ḥaqāʾiq taḥta l-mijbar* (2) *Jāmiʿ Abī l-Ḥawwārī* (n.p., n.d.).

⁹ Fahad al-Saʿdī devoted considerable attention to these early sources and the printed versions (al-Saʿdī, *Ḥaqāʾiq taḥta l-mijbar* (1) and (2)). To reconstruct the entirety of the *fiqh* teachings of these authorities, both al-Kindī’s *Bayān al-sharʿ* and hitherto unpublished manuscripts (such as *Jāmiʿ Abī Qatādab*, *Jāmiʿ Abī Zakariyyā*, and others) need to be analyzed. Later additions by copyists (sometimes identified as “*ziyādāt*”) are a well-known complication of working with the Omanī *fiqh* encyclopedias.

Ibrāhīm al-Kindī (d. 508/1115) and the *Muṣannaḥ* of Abū Bakr al-Kindī (d. 557/1162), are more encompassing and systematic in their discussion but tend to refer to older material with some additional explanation. They may also have preserved some of the previous dicta that have not come down to us independently or in the available printed versions of the earliest sources.¹⁰

More recent works, such as Ibn ‘Ubaydān’s *Jawābir al-āthār*, al-Sa‘dī’s *Qāmūs al-sharī‘ah*, al-Khalīlī’s and al-Sālimī’s works, may be reminiscent of later historical developments with respect to the sea. However, as a general rule, the early material is still referred to as authoritative.

Another potential source of early Ibāḍī maritime law is the *Kitāb al-Asbyākh*, a (probably lost) collection of *fatwās* compiled by a number of scholars engaged in *ribāṭ* in Dima, currently Seeb near Muscat, in the third/ninth century. *Kitāb al-Asbyākh* is frequently referred to in later encyclopedias (particularly *Bayān al-shar‘* and *Qāmūs al-sharī‘ah*) and could, if found in its entirety, allow even more conclusions on maritime law up to the third/ninth century. *Qāmūs al-sharī‘ah* also mentions additional material on the authority of the early sources that are not discussed in the printed versions of *Jāmi‘ al-Faḍl* and *Jāmi‘ Abī l-Ḥawwārī*.

The rules on *zakāh* and *jizyah* in al-Imām al-Ṣalt’s state, for example, are extensively documented in his lengthy advice to the newly appointed governor of Rustāq, which is preserved in al-Sālimī’s *Tuḥfah*.¹¹ Additional material on international relations is preserved in

¹⁰ Aḥlām al-Jaḥwariyyah devoted part of her doctoral thesis to identifying al-Kindī’s sources. See Aḥlām al-Jaḥwariyyah bint Ḥamūd, *al-Muḥtama‘ al-‘Umānī fī l-qarnayn 4-5 H/10-11 M min khilāl ba‘ḍ masā’il Bayān al-shar‘ li-Muḥammad ibn Ibrāhīm al-Kindī (t. 508 H/1115 M)* (Muscat: al-Jam‘iyyah al-‘Umāniyyah li-l-Kutub wa-l-Udabā’, Ph.D. Dissertation, 2019). See also Fahad al-Sa‘dī, *al-‘Umāniyyūn min khilāl Kitāb Bayān al-shar‘: dalīl tārikhī ilā tarājim al-‘Umāniyyīn min khilāl Kitāb Bayān al-shar‘ li-l-‘allāmah al-Kindī* (Muscat: Wizārat al-Awqāf wa-l-Shu‘ūn al-Dīniyyah 2007).

¹¹ Nūr al-Dīn al-Sālimī, *Tuḥfat al-a‘yān*, 181ff; Bouzenita, “A Reading in the Applied Ibāḍī Fiqh”, 7-45.

Bashīr ibn Muḥammad ibn Maḥbūb's *Kitāb al-Muḥārabah*,¹² which, however, does not provide any material related to maritime law.

Earlier Ibādī *fiqh* sources, such as the *Mudawwanah* of Abū Ghānim,¹³ presumably the oldest work of Ibādī *fiqh*, offer very little material on maritime law (see below). Research in other available material (*Jawābāt Jābir*, the Omanī *siyar*)¹⁴ did not yield any related material. The recently published *al-Sīrah al-muḍī'ah ilā abl Maṣṣūrah min bilād al-Sind* by Imām Rāshid ibn Sa'īd al-Yuḥmadī al-ʿUmānī (d. 440/1049)¹⁵ provides little insight into the existence of an Ibādī community in Sind at the time, which may (or may not) have an influence on the practice of Ibādī *fiqh* on the Indian Ocean; however, no specific material on maritime law is found here either. In contrast, a recently published manuscript¹⁶ is reminiscent of legal responses to questions of North African Ibādī pilgrims and reiterates the teachings of Abū Sa'īd al-Kudamī¹⁷ on the authority of Shaykh Ibrāhīm ibn ʿAbd

¹² Abdulrahman al-Salimi - Wilferd Madelung (ed.), *Early Ibādī Literature: Abu l-Mundbir Bashīr b. Muḥammad b. Maḥbūb*: Kitāb al-Raṣf fī l-Tawḥīd, Kitāb al-Muḥārabah and Sīra (Wiesbaden: Harrassowitz, 2011), 36-37.

¹³ Abū Ghānim Bishr ibn Ghānim al-Khurāsānī (d. early third century AH), preserved the teachings of Abū ʿUbaydah, al-Rabīʿ, Ibn ʿAbd al-ʿAzīz, Abū Ghassān, Abū l-Muʿarrij, Abū Ayyūb Wāʿil, and Abū Sufyān. The *Mudawwanah* is considered one of the most important works on Ibādī *fiqh*. Concerning maritime law, the *Mudawwanah* (2006) mentions only very few teachings, notably 102f regarding prayer on board a ship; *al-Mudawwanah al-kubrā* (2007) contains a case regarding people stranded on the beach (presumably after shipwreck) and the responsibility to transport them (471f), as well as a case on shipwreck (2/498).

¹⁴ Sayyidah Ismāʿīl Kāshif, *al-Siyar wa-l-jawābāt li-ʿulamāʾ wa-aʾimmat ʿUmān* (Muscat: Wizārat al-Turāth al-Qawmī wa-l-Thaqāfah, 1989); Sa'īd ibn Khalaf al-Kharūṣī (ed.), *Min jawābāt al-Imām Jābir ibn Zayd* (Muscat: Wizārat al-Turāth al-Qawmī wa-l-Thaqāfah, 1984).

¹⁵ Rāshid ibn Sa'īd al-Yuḥmadī al-ʿUmānī, *al-Sīrah al-muḍī'ah ilā abl Maṣṣūrah min bilād al-Sind*, ed. Sulṭān ibn Mubārak ibn Ḥamad al-Shaybānī (Muscat: Dhākirat ʿUmān, 1436/2015).

¹⁶ ʿAbd al-Raḥmān al-Sālimī, "Regulating Seafaring in Early Islamic Jurisprudence: A 3rd/9th century Ibadi Manuscript on Maritime Law", *The Silk Roads between China and Oman: Networks of Communication and Transmission of Ibadi Knowledge*, ed. Zhiming Fu - Angeliki Ziaka (Hildesheim: Olms, 2021), 37-48.

¹⁷ Abū Sa'īd Muḥammad ibn Sa'īd ibn Muḥammad ibn Sa'īd al-Nāʾibī al-Kudamī (305-361/918-972) is the authority of the first half of the fourth century AH and leading

Allāh al-Rustāqī¹⁸ regarding the sea. It may therefore have originated in the 4th/10th century. Its content echoes some of the detailed questions of *fiqh* generally discussed in the *fiqh* encyclopedias, such as etiquette on board, liability for damage, buying and selling on board, authority of the captain, jettison and prayer on board a ship. Starting from *Bayān al-sharʿ*, these rules are also referred to as *Sunan al-nākhudā* (using the Persian expression for the sea captain; also “Nawkhudhā”).¹⁹ This theme is not available in the 3rd/9th-century encyclopedias. Earlier sources mention the term *ṣāhib al-saḥīnab* for the sea-captain instead.²⁰ Another important authority of the era, the 4th/10th-century scholar Ibn Barakah (300-362 AH), referred to a very limited number of cases related to the sea.²¹

The available material on maritime law in its most different aspects is considerably more extensive from the 5th-6th/11th-12th-century encyclopedias onward, particularly in Muḥammad ibn Ibrāhīm al-Kindī's *Bayān al-sharʿ*²² and Abū Bakr al-Kindī's *Muṣannaf*²³ because

proponent of the Nizwā school in the great Omani *fiṭnab*. In the *fiqh* encyclopedias, he is usually referred to as Abū Saʿīd. See Custers, *al-Ibāḍiyya: A Bibliography*, 1/342f. Al-Kudamī authored *Muʿtabar li-jāmiʿ Ibn Jaʿfar*; see al-Saʿdī, *Muʿjam al-fuqahāʾ*, 2/99.

¹⁸ Ibn Saʿdī mentions Ibrāhīm ibn ʿAbd Allāh (without the *nisbah* al-Rustāqī) as one of the eminent scholars of the 4th/10th century; see Ibn Saʿdī, *Muʿjam al-fuqahāʾ*, 1/11.

¹⁹ Muḥammad Ibrāhīm al-Kindī, *Bayān al-sharʿ* (Muscat: Wizārat al-Turāth al-Qawmī wa-l-Thaqāfah, 1993), 6/107; 6/112.

²⁰ As in Salimi, “Regulating Seafaring in Early Islamic Jurisprudence”.

²¹ See his discussion on the status of sea water and whether it is suitable for ritual ablution (*wuḍūʾ*) (1/446) and a case on *muḍārabah* in maritime trade (4/1701): Should a merchant engage in *muḍārabah* in countries across the ocean? While mentioning differences of opinion in this case, Ibn Barakah overly weighs its permissibility given that the tradesman is known to engage in trade in countries across the sea. He prefers, however, that the *muḍārib* does not engage in planting trees, date palms or investing in agricultural lands as this is not consummated under the notion of “trade”, even though some scholars allow it if it is in the best interest of the investor and himself (cf. al-Kindī, *Muṣannaf*, 14/345).

²² Abū ʿAbd Allāh Muḥammad ibn Ibrāhīm ibn Sulaymān al-Kindī (d. 508/1111), author of the *fiqh* compendium *Bayān al-sharʿ*.

²³ Abū Bakr Aḥmad ibn ʿAbd Allāh ibn Mūsā al-Nizwānī al-Kindī (d. 557/1162). He authored the *fiqh* compendium *al-Muṣannaf fī l-adyān wa-l-aḥkām*, and of *Kitāb*

of their collection of preceding material. The following discussion focuses on the earliest available material that may be considered closest to the reality of maritime law in the Imamate era, with reference to later works and additional explanations where necessary. The 3rd to 5th/6th century AH is also the period before the consolidation of European powers and influence (Spanish, Portuguese, Dutch, and English) over parts of the Indian Ocean, which means that possible foreign influences on the practiced law may be excluded for this era.

Legal Cases Related to the Sea and Their Discussion in the Ibādī *Fiqh* Encyclopedias: An Attempt at Categorization

How are cases related to the sea reflected in the Omanī *fiqh* literature? There are very few separate chapters or treatises in the *fiqh* literature on legal issues related to the sea (such as a *bāb zakāt al-baḥr* in al-Izkawī's and al-Kindī's works or *qitāl al-bawārij*, fighting pirates²⁴). An exception to this is the 4th/10th-century *sīrah*, which refers to al-Kudamī's views exclusively on questions related to seafaring. The scholars and their works examined for this research do not generally attempt abstract theorizations of the legal cases related to the sea. Typically, cases are not discussed separately but are treated as branches of *masā'il* (in contracts, business partnership, *ijārah*, *ḍamān*, *waṣīyyah*, *shuf'ah*, *zakāh*, *'ushūr*, and international relations). It also corresponds to the nature of (early) *fiqh* encyclopedias to refer to dicta (*aqwāl*) without mentioning detailed evidence or an explanation of their derivation from legal sources. This is characteristic of both the literary genre and the era of compilation.

If a categorization of the transmitted legal dicta with a relation to the sea were to be attempted, then I would suggest three different tiers, reflected by the following discussion of cases.

First, in addition to the pure legal matter, there are administrative or organizational questions. Where do passengers sit? Where do they

al-ibtidā' that discusses the division of Omanī scholars into the Nizwā and Rustāq factions after the forced abdication of al-Ṣālt. He divided the *Bayān al-shar'* of his teacher, Abū 'Abd Allāh Muḥammad ibn Ibrāhīm ibn Sulaymān al-Kindī, into chapters and gave it its title. See Nāṣir - al-Shaybānī, *Mu'jam a'lām al-Ibāḍīyyah*, 56.

²⁴ Because of the constraints of this paper, the material on securing the seaways and maritime piracy will be analyzed in another research paper.

wash their clothes? In the Omanī context, these rules are often summarized under *sunan al-nākbudhā* (or: *nawkbudhā*). These are conventional and may (or may not) have been informed by established practices on the sea, unless there are Islamic particularities related to prayer on board a ship, for example. The early *fiqh* encyclopedias that I researched do not occupy themselves much with these questions; the earliest documentation seems to be on the authority of Abū Saʿīd al-Kudamī in the 4th/10th century,²⁵ while the relatively recent *Qāmūs al-sharīʿah*²⁶ is very rich in this regard. I also categorize the taxation *procedure* described in al-Izkawī's *Jāmiʿ* here. From the perspectives of the Islamic legal rule and its categories, these questions relate to the *mubāḥ* and are legally indifferent.

Second, the discussion of some legal cases reveals that they have been extracted in analogy (*qiyās*) to established cases on land. Some scholars reflect this explicitly in their terminology, as we will see.

Third, there are obviously some particularities of the sea, such as rules on *ḥarīm al-baḥr*, the appurtenance of the sea,²⁷ or pearls and other items found at the beach. The description of the sea as an “enemy” or, implicitly, its consideration as a spatial factor may impact the legal rule, particularly where the sea is seen as a spatial obstacle to redeem benefits (in *shufʿah*, *waṣiyyah*, covering debts). The underlying rationale is probably that the sea is a physical obstacle between people that imposes too much hardship to redeem certain rights or that traveling the sea is, at the baseline, only permissible for *ḥajj* and *jihād*. Although rights are established if these reasons are involved, they cannot be redeemed if the purpose of traveling the sea (as in trade) differs.

The following is a presentation of cases related to the sea with respect to shipment and transportation, contract work onboard a ship, shipwreck and liability, taxation, and missing persons. It is an initial introduction to the vast amount of available material on legal cases

²⁵ As in Salimi, “Regulating Seafaring in Early Islamic Jurisprudence”.

²⁶ Especially vol. 13.

²⁷ See Anke Iman Bouzenita, “The Division of the Seas in International and Islamic Law and the Concept of *Ḥarīm al-Baḥr*: A Comparative Fiqh Study”, *Ilabiyat Studies* 12/2 (2021), 143-184.

related to the sea within the larger corpus of Islamic law in its Ibāḍī Omani reading.

Shipment and Transportation

One of the earliest Omani *fiqh* encyclopedias, *the Kitāb Jāmiʿ al-Faḍl ibn al-Ḥawwārī* (d. 278/891), discusses a number of detailed questions that concern the active trade across the Indian Ocean at the time. Many of these dicta relate to transportation at sea and hiring people and vessels for the purpose. The legal rules related to transportation at sea are integrated into discussions of transportation on land, with no particularities.

In the chapter on Hiring and the Likes (*kitāb al-ijārah wa-naḥwihā*), al-Faḍl ibn al-Ḥawwārī identified the case of a person who hires another to transport wood for him.²⁸ The wood is on the coastline. Afterward, the sea comes in because of (high) tide, and it carries the wood to its owner's door. In this case, the hired worker does not deserve a wage (as the wood was carried by the sea, not by him). If a person hires another individual to transport wood for a specified wage, the individual tosses it into the sea and rafts it until he reaches the house of the wood's owner, and the first person then denies paying the wage by claiming that he had hired him to transport the wood but that he had not actually carried it but tossed it into the sea and then rafted it, then the hired worker deserves the full wage, unless the water has harmed the wood. In the latter case, the contractor (*ajīr*) is fined for the loss but still receives his entire wage. The same applies to transportation on rivers.

If a contract is made to transport wood (or roots) to a specified place and the flash flood (sail) subsequently comes and carries it to the specified place, then the contractor is not entitled to any wages. Abū l-Ḥawwārī responded, in a quasi-educational manner, that the owner of the wood is told that the contractor may return the wood to its previous place so that he can transport it himself (and thereby deserves his wage); otherwise, he can (just) give him his wage. The same applies to wood that is carried by the tides to the owner's door and roots that

²⁸ This teaching is mentioned on the authority of Abū l-Ḥawwārī. See Abū l-Ḥawwārī Muḥammad ibn al-Ḥawwārī al-Qarrī, *Jāmiʿ Abī l-Ḥawwārī* (Muscat: Wizārat al-Turāth wa-l-Thaqāfah, 1985), 3/68f.

have been carried by the flash flood (sail). As for the contractor who rafts the wood in the sea, he deserves his wage, however, he wants to transport it.²⁹

On the authority of Abū ‘Abd Allāh (=Muḥammad ibn Maḥbūb al-Ruḥaylī), an important case in international shipment is discussed that has found its way into the major later *fiqh* encyclopedias:

Who hired someone to transport himself and his merchandise from Basra to Sarnadīb (Sri Lanka) on board a ship, and he transports him until they reach Oman. The client then claims that he never went to Sarnadīb before and does not know it. He demands to have his goods disembarked and not to move out with him. Abū ‘Abd Allāh says: If he does not know the country, he has hired the transport of goods to, he may stay behind. He shall not be forced to move out with him, and his goods are being disembarked. The client shall pay him his wage in relation to the distance he transported him and his goods, according to the expertise of reliable specialists.

I asked: What if the ship owner disputes him, saying his goods are at the very bottom of my ship and I cannot unload them without unloading the entire ship; while the other passengers on the ship dispute that, if he gets his goods unloaded, they will be delayed and then be stranded in Oman [due to the winds].

Abū ‘Abd Allāh said: If the experts agree that there is a harm to the passengers of the ship, the (requestor) who wants to stay may stay in Oman, while his goods remain on board the ship. In this case, somebody will be authorized to receive the goods when they arrive in Sarnadīb.

He is also of the opinion that, if his goods remain on board the ship, the ship’s owner guarantees the goods to their owner.³⁰

²⁹ Al-Faḍl ibn al-Ḥawwārī, *Jamī‘ al-Faḍl ibn al-Ḥawwārī* (Muscat: Wizārat al-Turāth wa-l-Thaqāfah, 1406/1985), 3/68f. Compare the same case in al-Kindī, *Bayān al-sbar‘*, 40/394: On the authority of Abū Mu‘āwiyah (*mas’alah min al-ziyādah al-muḍāfah aḥsibu ‘an Abī Mu‘āwiyah*); see also Abū Bakr Aḥmad ibn ‘Abd Allāh ibn Mūsā al-Kindī, *al-Muṣannaf*, ed. Muṣṭafā Ṣāliḥ Bājū (Muscat: Wizārat al-Awqāf wa-l-Shu‘ūn al-Dīniyyah, 2016), 12/617.

³⁰ Al-Faḍl ibn al-Ḥawwārī, *Jamī‘ al-Faḍl*, 3/79f. The same case is referred to in al-Kindī, *Bayān al-sbar‘*, 40/455f; al-Kindī, *Muṣannaf*, 12/607ff. See also Abū l-Mundhir Salamah ibn Muslim al-‘Awtabī, *Kitāb al-Dīyā’*, ed. Sulaymān ibn Ibrāhīm

Contract Work on Board a Ship

The next case, interestingly, is about a worker who seems to have an agenda of neglecting work engagements:

With reference to (*wa-min taʿlīf*) Abū Qaḥṭān,³¹ as mentioned in the book of ʿAmr ibn Saʿīd,³² about a man who had himself hired to work on sea in a vessel (*qārib*) for ten months for a specified amount of *dirhams*, and he (*al-ajir*) usually works at sea. When he completed two months with him, he said: I am not able to work at sea, and I am worried for my life. He then moves on to another vessel to work there, and tells the owner: Your vessel is cracked, I am scared to drown. Can the ruler (the authorities) force him to complete his term?

In case this worker is used to doing this work at sea, and he has seen that vessel and knows the nature of the work with it, the condition is binding on him, and he will be made to finish his term. If he claims that his vessel is damaged, the ruler needs to appoint two reliable experts in that particular work and boat damages, in order to confirm that it is damaged and that they fear for the safety of the workers.

If they say that the damage is of a kind that does not allow it to be worked on, the ruler does not oblige him to work for the fear of perishing. In this case, he obtains the amount that is due for two months' work. And Abū ʿAbd Allāh used to act like this with the

Bābzīz al-Warjalānī (Muscat: Wizārat al-Awqāf wa-l-Shuʿūn al-Dīniyyah, 2015), 20/428; Khamīs ibn Saʿīd ibn ʿAlī ibn Masʿūd al-Shaqṣī, *Minbāj al-ṭālibīn wa-balāgh al-rāghibīn*, ed. Muḥammad Kamāl al-Dīn Imām (Muscat: Wizārat al-Awqāf wa-l-Shuʿūn al-Dīniyyah), 6/509; see also Aḥmad Abū l-Wafāʾ, *Aḥkām al-qānūn al-dawli wa-l-ʿalāqāt al-dawliyyah fi l-fiqh al-ʿIbādī* (Muscat: Wizārat al-Awqāf wa-l-Shuʿūn al-Dīniyyah, 2013), 2/294ff.

³¹ Abū Qaḥṭān Khālīd ibn Qaḥṭān al-Ḥajarī al-Kharūṣī, from the village of Ḥajar in Wādī Banī Kharūṣ, is a contemporary of Abū l-Muṭṭhir al-Ṣalt ibn Khamīs al-Kharūṣī. A scholar of the 3rd century AH, he narrated from Muḥammad ibn Maḥbūb and his sons Bashīr and ʿAbd Allāh. He authored *Jāmiʿ Abī Qaḥṭān* and other books; see al-Saʿdī, *Muʿjam al-fuqabāʾ*, 1/175f; Custers, "Ibāḍīs of the Mashriq", 1/172.

³² Not yet identified.

*ḍarārī*³³ who are hired to work on ships.³⁴

Of particular interest here is also the consultation of two reliable experts to assess the possible amount of damage to the ship as a basis to decide the case – a procedure that reminds us of modern requirements and showcases the advanced level of jurisdictional decision-making at the time.

The author then specifies general terms and conditions on contracting, such as “hiring on a specified work, a specified time, and a specified wage, like a (riding) animal or a boat that carries a specified load to a specified place for a specified wage. All of these forms of hiring contracts are permissible by the agreement of the scholars.”³⁵ This statement highlights how legal rules and cases related to the sea do not differ essentially from those on land.

Shipwreck and Liability

Cases of shipwreck must have been numerous in Omanī history.³⁶ Some of these cases were preserved in the *fiqh* literature because they

³³ The term *ḍarārī* could not be identified and may be a copying mistake. What is meant is obviously servicemen.

³⁴ Ibn al-Ḥawwārī, *Jamīʿ al-Faḍl*, 3/80f; see also al-Kindī, *Bayān al-sbarʿ*, 40/456; al-Kindī, *Muṣannaf*, 12/608.

³⁵ Ibn al-Ḥawwārī, *Jamīʿ al-Faḍl*, 3/83.

³⁶ The oldest documented case of shipwreck occurred during the Imamate of ‘Azzān ibn Tamīm in the 3rd/9th century. Jumayyil al-Saʿdī mentions the case in his *Qāmūs al-sbarīʿab*. Someone had hired a slave for 50 *dirhams* for pearl diving (*li-l-ghauṣ*). He did so for some time, then the ship wrecked, its people dispersed, and the slave escaped. The slave was then hired by other people for a specified wage and found pearls of immense value. Nāṣir ibn Sayf al-Saʿdī, “al-Baḥr min khilāl kutub al-jawābāt wa-l-nawāyil al-fiqhiyyah al-ʿUmāniyyah: al-nuẓum wa-l-ʿalāqāt wa-l-ḥawādith”, *al-Awrāq al-ʿilmiyyah li-l-muʿtamar al-dawli: Turāth ʿUmān al-baḥrī*, 23-25 October 2018, ed. Aḥmad ibn Hāmid al-Rubʿānī (Muscat: Sultan Qaboos University, 2020), 224; Jumayyil Khamīs al-Saʿdī, *Qāmūs al-sbarīʿab al-ḥawī ẓuruqabā al-wasīʿab* (Muscat: Maktabat al-Jil al-Wāʿid, 2015), 27/337. The same case is mentioned in al-Kindī, *Muṣannaf*, 12/602. The *Qāmūs* mentions that the ship was met with strong winds on its way to India, which kept the ship from pursuing its journey. The owner of the merchandise wanted to take his property and reduce the wage, but the hired captain refused and insisted to either continue the voyage to India or take his full wage. The case was referred to Saʿīd ibn Bashīr

were submitted to scholars and judges at the time to solve questions of liability (*ḍamān*). The earliest mention of a shipwreck that I could identify in the Ibāḍī *fiqh* literature is in Abū Ghānim's *al-Mudawwanah al-kubrā*, and it also contains one of the few dicta regarding maritime law:

If the ship of a sailor (*mallāḥ*) wrecks, and the food on it drowns due to a turmoiled sea or by the movement of the ship, while it was rented for transport, Ibn 'Abd al-'Azīz used to say: He is liable. And al-Rabī' said: There is no liability on him in the water (the sea), especially as it is an enemy (has the status of an enemy).³⁷

The *Jāmi'* *al-Faḍl* refers to the authority of Abū Sa'īd ibn Muḥammad³⁸ in "Another chapter on Hiring" concerning a shipwreck in the open sea:

If the owner of the goods said, whoever can retrieve part of it, it belongs to him, and a person retrieved of the goods what he could. What if the actual owner steps down from his saying and claims his possession? He said: Whoever retrieved it is given a comparable wage. And if he said, 'Whoever retrieves something may keep half of it', he is bound by this condition he set up for himself.³⁹

al-Ṣubḥī who decided that the hired worker deserved his full wage in any case; see al-Sa'dī, "al-Baḥr min khilāl kutub al-jawābāt", 225.

³⁷ Abū Ghānim Bishr ibn Ghānim al-Khurāsānī, *al-Mudawwanah al-kubrā*, ed. Muṣṭafā ibn Ṣāliḥ Bājū (Muscat: Wizārat al-Turāth wa-l-Thaqāfah, 2007), 2/498. There is very similar wording in al-Kindī, *Bayān al-sbar'*, 40/472 (*min al-zīyādāt al-muḍāfah min Kitāb al-Ashyākh*); see also 'Āmir ibn 'Alī al-Shammākhī, *al-Īḍāḥ* (Muscat: Wizārat al-Turāth al-Qawmī wa-l-Thaqāfah, 1999), 4/30 (*li-anna l-mā' 'adīd*); see also Abū l-Wafā', *Aḥkām al-qānūn al-dawli*, 2/348. See also al-Sa'dī, *Qāmūs al-sbari'ah*, 51/308–309 (*li-anna l-baḥr lā yamlik*), cf. Abū l-Wafā', *Aḥkām al-qānūn al-dawli*, 2/350.

³⁸ This authority cannot be clearly identified. In his *Jāmi'* *al-Faḍl*, Ibn al-Ḥawwārī refers to Abū Sa'īd Muḥammad al-Kudamī as Abū Sa'īd, which could be a mistake in the script or a reference to a different authority.

³⁹ Ibn al-Ḥawwārī, *Jāmi'* *al-Faḍl*, 3/109; see also al-Kindī, *Bayān al-sbar'*, 40/379. Compare the same case in al-Kindī, *Muṣannaf*, 12/650, on the authority of Sa'īd ibn Maḥraz, likely the son of the same scholar mentioned in *Jāmi'* *al-Faḍl*.

In the chapter on the liability of the hired worker, *Jāmi' al-Faḍl* (referring to the dicta of Abū 'Uthmān⁴⁰) discusses the case of a man “who hired a ship and loaded his goods, and then stayed as long as Allah wanted him to stay, until the season for ships to disembark is over. He (the client/) then tells the ship owner to unload his goods as he does not want to move out, but rather intends to stay. If the delay was caused by the owner of the goods, he (the ship owner) may disembark and continue his journey, and he (the owner of goods) is bound by (the terms of) his hiring. And if the ship owner caused the delay and kept him until the ship had already left, the storm (*al-khabb*) rose, and the danger of the ocean intensified? In this case, the owner of the goods may unload his goods, and he is not bound to pay the wage.”⁴¹

In another chapter, *Jāmi' al-Faḍl* specifies the following:

About a man who hired another to transport him on his ship to Aden, then the ship wrecks on the way, and he returns and builds another one? He has to transport him on the ship that he built, unless he had specifically hired him to be transported on that (wrecked) ship. In this case, he does not have to transport him. He then has to return the amount of the wage that is left for the transport to Aden.

I said: And if he gets lost and wants to return to where he started from, and tells the passengers who hired him, return with me, until the wind comes back, then I will transport you, and they dislike it, he said: He has to carry them from the position they have reached once the wind returns to where they want. And if they want to return with him, he does not have to return any of the wages they paid. And if he does not want to transport them, while they had told him to transport them, and they want to take part of the wage back that corresponds with the missing distance, they can do so.⁴²

If a group of people has hired a worker to carry them onboard a ship to a known country, and he then does not want to transport

⁴⁰ Sulaymān ibn 'Uthmān Abū 'Uthmān, alive in 192/808. He lived during the era of Imām Ghassān (192-207 AH) and was a *qāḍī* in Nizwā. Al-Ḥawwārī ibn Muḥammad was one of his students; see al-Sa'dī, *Mu'jam al-fuqahā'*, 1/146.

⁴¹ Ibn al-Ḥawwārī, *Jāmi' al-Faḍl*, 3/165; similar to 3/79.

⁴² Ibn al-Ḥawwārī, *Jāmi' al-Faḍl*, 3/172f.

them, can he be compelled to transport them and himself on the sea at risk? He said, yes, if he knows the country that they have hired him to transport them to. Moreover, if he does not know it, then he is not obliged to transport them.⁴³

Jāmi' Abī l-Ḥawwārī also discusses, in some detail, questions of trading in jettisoned goods. The dictum refers to the authority of the 4th/10th-century scholar Abū Sa'īd al-Kudamī and is therefore a later addendum.

And on the authority of someone else (*wa-min gbayribī*, this expression indicates that the following dictum is an addition to the original text). Abu Sa'īd –may Allah have mercy on him– was asked about the Muhra, if they arrive in Adam with their goods and say those stem from shipwrecks. And some of them say: He dived for it (the goods) by order of the owners of the boat for a share of the goods. Others say: It was transported to Adam for them (the owners). Others again say: It is stranded good (*luqṭah*) from the coastline. He said: It is permissible to buy from them, as long as it (the goods) cannot be allotted to the possession of a particular person and they could make this claim later.⁴⁴

How can we distinguish between similar jettisoned goods?

On the authority of Abū l-Ḥawwārī, if a ship owner transports dates and goods that resemble each other, then the ship wrecks at sea, and some of the goods are lost, while others stay in his hands, and the labels of ownership get mixed up, so that not every person can

⁴³ Ibn al-Ḥawwārī, *Jāmi' al-Faḍl*, 3/177. Al-ʿAwtabī mentions in his *Ḍiyā'* a number of similar case studies that are reminiscent of the busy trade relations between Oman and China: “Who hires a man from the people of Basra to China for a specified amount of *dirbans*, and when they were on the way, something happened to them that prevented them from continuing their journey to China, until the time where ships can sail was over, then the hired worker only deserves to be paid to wherever they reached, that is in case something happened that was out of their control. If the ship owner caused the delay without an excuse, the hired worker deserves the full pay.” (20/431). In a variation of this question, al-ʿAwtabī discusses the case of a hired worker on a ship from Sindān (in India) on condition that he works on the ship until he reaches Aden. However, wind and waves divert the ship from Sindān to Oman (20/427).

⁴⁴ Abū l-Ḥawwārī, *Jāmi' Abī l-Ḥawwārī*, 2/107.

have his belongings returned. What is the procedure in this case? According to your description, the owners of these goods should come to an agreement amongst themselves and find a compromise in this regard. If this is not the case, the goods are held back until they agree on something, or they are distributed among the poor. This is so because it may also be said with regard to the *Raqīb* (supervisor) who guards people's grains, then a storm rises, and the grains get mixed up, and the *Raqīb* does not know which grain belongs to whom. The owners of the grains do not recognize their grains themselves, so some of the scholars say, if the owners can come to an agreement; if not, the grains are distributed among the poor. We like to follow this example with regard to the goods. If they agree, otherwise, the goods will be withheld forever until they agree or distribute them among the poor."⁴⁵

This case study provides an explicit example of the usage of *qiyās*, that is, analogy, from land to the sea. In the case of known ownership, *Jāmi' al-Faḍl* rules that "Property from the villages that gets flooded into the sea, as well as date palms, and more, and it is known to be in someone's possession; the rule on these goods is that they belong to their owners, and entering the flash flood (*al-sayl*) and the sea does not annihilate their ownership, and Allah knows it best."⁴⁶

Taxation

Zakāh and *ʿushūr* are, given the economic importance of sea trade in the Indian Ocean, a pervasive issue in the Omanī *fiqh* compendia. Most striking to the reader is the common thread in these *fiqhī* discussions that *any* taxation in terms of *zakāh*, *ṣāfiyah* (*kharāj*), *ʿushūr*, and even *jizyah* is to be collected by the authority – here, the Imām of Oman and his agents. This must follow one condition: the state provides protection (*ḥimāyah*), be it for the Muslims originally residing in Oman, Muslims of other origins, *dhimmīs*, and even non-Muslims entering the port as tradesmen. Protection extends across the country and across trade routes. *No taxation without protection* is the common denominator of many cases. The emphasis on this point in the discussion also sheds light on securing the trade routes during this

⁴⁵ Abū l-Ḥawwārī, *Jāmi' Abi l-Ḥawwārī*, 2/308f; al-Kindī, *Bayān al-shar'*, 6/111.

⁴⁶ Ibn al-Ḥawwārī, *Jāmi' al-Faḍl*, 2/125.

time: the Omani fleet showed a strong presence. Numerous case studies on piracy and how to handle it testify to this.⁴⁷

The first Imām of Oman, al-Julandā ibn Mas‘ūd (d. 134/752), sent a question to Abū ‘Ubaydah and Ḥājib,⁴⁸ whose answer is preserved in al-‘Awtabī’s *Ḍiyā’*: “You mentioned that you are taking the *zakāh* of people coming in from the sea, while there is a distance of three or two days between you and you do not protect them. Be informed that we do not like that you take anything from them while you do not protect them.”⁴⁹

We may state that although some differences of opinion on certain branches of the legal cases are reported, the practices described in the early *fiqh* encyclopedias mirror the reality practised during the Imamate in the 2nd-3rd/8th-9th centuries.

Zakāh on Goods Coming from the Sea (Zakāt al-māl al-qādīm min al-baḥr)

The following excerpt from *Jāmi‘ Abī l-Ḥawwārī* seems to be the oldest examination available in print, chronologically followed by a very detailed discussion in Ibn Ja‘far al-Izkawī’s *Jāmi‘* (of the same period), which includes details on the exact procedure of paying *zakāh*/taxes upon arrival and Ibn Ja‘far’s criticism of it. Ibn Ja‘far’s dicta are reproduced in the literature (*Bayān al-sbar‘*, *Muṣannaḥ* et al.). I focus on the excerpt in *Jāmi‘ Abī l-Ḥawwārī* first, with some additional detail from his contemporary al-Izkawī. It seems that Abū l-Ḥawwārī’s text was not copied in subsequent encyclopedias, although the corresponding cases show the same content.

On incoming capital from the sea, and the Muslim (owner) does not hail from Oman and brings merchandise from the lands of *abl al-ḥarb* of the polytheists, with capital to Oman. If the incoming person sells it, the Imām of Oman or his representatives take the amount of *zakāh* that has to be levied from it (2.5 %) if it is among the goods eligible for *zakāh*, or if he has transferred it to a different

⁴⁷ See, for instance, Abū l-Ḥawwārī, *Jāmi‘ Abī l-Ḥawwārī*, 1/95; al-Kindī, *Bayān al-sbar‘*, 69/188ff; al-Kindī, *Muṣannaḥ*, 8/191–198.

⁴⁸ This was possibly Ḥājib ibn Mawdūd Abū Mawdūd al-Ṭā’ī al-Azdī, a scholar of the second century AH; see al-Sa‘dī, *Mu‘jam al-fuqahā’*, 2/132.

⁴⁹ Al-‘Awtabī, *Kitāb al-Ḍiyā’*, 9/305.

good *zakāh* is taken from, and this is the overweighing dictum. And some say: No *zakāh* needs to be paid unless the lunar year (*ḥawl*) has passed by while he is in Oman with his merchandise. In case he hasn't sold it, or he sold a part of it that is less than the minimum amount (*niṣāb*) for paying *zakāh*, and he leaves Oman, he (the Imām) does not take the *zakāh* from it unless the year has passed over it in Oman. The same applies if he arrives with unminted gold or silver; it has the same status as the merchandise with regard to taking *zakāh* from it, and there is a difference of opinion on it as well. With regards to *dirhams* and *dinārs*, the *zakāh* is only taken once the lunar year has passed by in Oman and the complete *niṣāb* has been reached. In case the arriving person came from a Muslim country, he only pays *zakāh* once the lunar year has passed in any case.⁵⁰

If he came from the land of *abl al-ḥarb* from the polytheists, while he (originally) hails from Oman, but he had travelled from Oman to that place and then returned to Oman, he is treated like the people of Oman with regard to the *zakāh*, and every place (*dār*) of those who are not in obedience to the Imām of the Muslims is called *dār al-ḥarb*. If the merchandise of this Muslim who arrived with it from *abl al-ḥarb* of the polytheists is beneath the minimum amount (*niṣāb*) of *zakāh*, *zakāh* is not being levied from it, and the money (*darāhim*) he brought with him in addition to his merchandise is not subject to *zakāh*, unless it is unminted gold or silver, and it will be allotted, if he sells it, to the value of his merchandise, and *zakāh* is taken from it until he sells some of it, according to some Muslims. As to the dictum: It is only deducted after the lunar year has passed; and also if he travels to the land of *abl al-ḥarb* from the polytheists after he had sold his merchandise, *zakāh* was taken from it and he then returned to Oman with his merchandise, then *zakāh* is only taken from it once every lunar year according to the practiced teaching, and this in case the incoming person is not from the people of Oman.

⁵⁰ This is an important distinction, as a differentiation is made not only between Muslims of different origins but also regarding the origin of goods, whether from a Muslim country or a non-Muslim country.

If that person who came from Oman after he had sold his merchandise and *zakāh* was taken from it stayed, he does not have to pay *zakāh* on it afterwards, unless the lunar year has passed since he had sold and submitted the *zakāh*, regardless of whether the sale took place when he arrived, or after the lunar year had passed. If he has not sold, and the merchandise is still with him, the time to deduct the *zakāh* is once the lunar year has passed in Oman.⁵¹

In another case study, the *Jāmi'* states,

If the *mushrik* arrives from the land of war (*arḍ al-ḥarb*), from the land of the polytheists, to the port of the Muslims? Some Muslims say: '*Usbr* is taken from him. Others say: What is taken from him is like what their king takes from the Muslims if they arrive there; and every dictum of the Muslims is allowed (to be implemented). As far as I remember, this applies only if the Muslims protect the sea, and Allah knows best. And if the *mushrik* arrives with merchandise from other than the territory of the people of *shirk* to the land of the Muslims? Some say: '*Usbr* is taken from his wealth. Others say: It is not taken from him, unless he turns it in out of his free will, and Allah knows best.⁵²

The lengthy chapter on *zakāt al-baḥr* in al-Izkawī's *Jāmi'*⁵³ may confirm the importance of sea trade and the details given to questions of taxation at the time. The text has been –with minor variations and some additions– rendered in both al-ʿAwtabī's *Ḍiyā'* (9/305ff), al-Kindī's *Bayān al-shar'* (19/303-310, 311-320), and al-Kindī's *Muṣannaf* (5/380ff), all from the 5th-6th/11th-12th centuries. The text is complementary to Abū l-Ḥawwārī's text with additional detail while preserving the same overall tone.

The practical detail mentioned concerning the exact procedure of taxation is striking. Al-Izkawī gives us a picture of the protocol that may have been in place in the coming centuries.⁵⁴ He states that

⁵¹ Abū l-Ḥawwārī, *Jāmi' Abī l-Ḥawwārī*, 1/307f.

⁵² Abū l-Ḥawwārī, *Jāmi' Abī l-Ḥawwārī*, 1/309.

⁵³ Abū Jābir Muḥammad ibn Jaʿfar al-Izkawī, *Jāmi' Ibn Jaʿfar* (Muscat: Wizārat al-Turāth wa-l-Thaqāfah, 2018), 2/113–125.

⁵⁴ Taxation was carried out in Sohar in the first 6 centuries AH; cf. al-Saʿdī, "al-Baḥr min khilāl kutub al-jawābāt", 214.

The first thing *ṣāhib al-sāhil* in Sohar, who takes the *zakāb* of those coming in from the sea, does is to send an *amīn* (secretary) once he hears of the arrival of a ship. He documents all slaves and goods belonging to anyone and the wealth of every person on a paper in his name. He then passes this document to the owner of the vessel and asks him to proceed to the *ṣāhib al-sāhil* wherever he is, give him the document and write down his possessions. If the owner of the goods is a foreigner, he himself assigns a patron (*kafil*) to him until he sells his goods, returns it to the patron, and if he sells it, his *zakāb* is taken. When his goods are transported, he comes to *ṣāhib al-sāhil* so that he may see him and allow him to return to the sea.

Al-Izkawī criticizes the procedure as too strenuous for the owner of the merchandise:

Maybe his (*ṣāhib al-sāhil*'s) home is in ‘Awtab, and he needs to transport himself and his goods at peril, or he gets into a strong wave to get to *ṣāhib al-sāhil*, who is in the garrison (*al-‘askar*) or wherever he is, and then he needs to return to his house. Maybe he is a stranger and cannot find (afford) a patron, so that he and his goods will remain stranded until a patron arrives.

Al-Izkawī discussed the issue with Sulaymān ibn al-Ḥakam,⁵⁵ who answered: “The governor (*wālī*) keeps him in his presence and orders a patron for him. If he cannot find any, he writes down his name and lets him go, and maybe Abū Marwān intended that otherwise the *zakāb* would be lost. Once the ship owner sets his foot on land, and everybody gets mixed up, and they are strangers; then who is going to identify their goods or themselves and turn them in to the governor?” He goes on to state that only the Wālī on the coast of Sohar has the authority to collect the *zakāb*. In the time of al-Muhannā, he reports, it

⁵⁵ Abū Marwān Sulaymān ibn al-Ḥakam ibn Bashīr died before 260 AH/874 AD, and he was a reputed scholar and *qāḍī* with links to Muḥammad ibn Maḥbūb; see al-Sa‘dī, *Mu‘jam al-fuqabā’*, 2/138. Al-Sālimī’s *Tuḥfat* mentions him as *wālī* of Sohar at the time of al-Muhannā (al-Sālimī, *Tuḥfat al-a‘yān*, 151); al-Ṣalt terminated him whereupon he returned to Nizwā and stayed there until his death (al-Sālimī, *Tuḥfat al-a‘yān*, 161).

happened that other instances took the *zakāh*, and the Imām returned that authority to *ṣāhib al-sāhil*.⁵⁶

Al-Izkawī also indicates that the sea does not in any way impact the legal rule:

Know that *zakāh* on the Muslims' possessions that come from the sea is like the *zakāh* on their possessions on land; the sea does not introduce any aspect that would change it from its due date, and it neither increases nor decreases what Allah has made obligatory; but those possessions that are brought to the people of Oman from the land of *shirk* carry some difference of opinion.⁵⁷

Regarding the possessions introduced to Islamic land from the lands of war (*bilād ahl al-ḥarb*), the Muslims (here, the Ibādīs) are of the opinion that tax merchandise imported from the polytheists to Islamic lands should be taxed just like the ruler of those lands taxes Muslims on their merchandise. With respect to the people of Iraq and other Muslims from Islamic lands who brought merchandise from non-Muslim lands and then stopped in Oman and traveled to Iraq or Persia, the Muslims do not see that *zakāh* should be taken from their wealth, even if it is due. This is so in case they have not been protected on their merchant route from the beginning to the end. *Ṣadaqah* (*zakāh*) is not levied on those who have not been protected for a year. However, if the wealth of those foreigners remains in Oman for a year, *zakāh* is to be levied on it. If they come to Oman with capital in the form of gold or silver, they confirm that *zakāh* has not been levied on it for years and that they are strangers (non-Omanīs) and did not sell them (possessions), then it is not levied. In this case, the Muslims see that they have an option; if they want to pay them their *zakāh*, then they will accept it from them, and if they do not do it out of their own will, then they are not forced to deduct their *zakāh*.⁵⁸

Al-Izkawī mentions, on the authority of Abū Marwān, that for every 20 *dīnārs*, not less than one *dīnār* should be taken (as *ʿushr*, which amounts to half of *ʿushr* or 5%). Otherwise, he emphasizes the

⁵⁶ Al-Izkāwī, *Jāmiʿ Ibn Jaʿfar*, 2/120, cf. al-Saʿdī, “al-Baḥr min khilāl kutub al-jawābāt”, 213.

⁵⁷ Al-Izkāwī, *Jāmiʿ Ibn Jaʿfar*, 2/112; al-Kindī, *Muṣannaʿ*, 5/380.

⁵⁸ Al-Izkāwī, *Jāmiʿ Ibn Jaʿfar*, 2/113f; al-Kindī, *Muṣannaʿ*, 5/380; compare the treatment of *zakāt al-baḥr* in al-Kindī, *Bayān al-sharʿ*, 19/303-310.

principle of reciprocity; if their king takes one dinar out of two, then we take the same amount from them.⁵⁹

To complete the picture, in the chapter on the *distribution of zakāh funds* (according to the categories mentioned in Q 9:60), the *Muṣannaḥ* explicitly states that *ṣadaqāt* (here: *zakāh*) of the sea and the coastline is not permissible to be levied without sufficient protection and defense.⁶⁰ It then mentions (implicitly) that protection of the coastline is financed from the category of (*sabm*) *fi sabīl Allāh*. Al-Izkawī details that the purpose of the use of *‘ushūr* taken from the *abl al-ḥarb* is the same as that of *jizyah* and *ṣawāḥil (kharāj)*.⁶¹

Zakāh was typically levied on the merchandise once the merchant set foot on the Omanī coastline. The *Muṣannaḥ* discusses whether a merchant who is on the Omanī coastline (*sawāḥil ‘Umān*) under Muslim rule has to pay *zakāh* on capital (*ra’s al-māl*) that is currently on the sea or only on what is in his hands. The *Muṣannaḥ* reports a difference of opinion in this case.⁶² Abū l-Ḥawwārī states concerning *zakāt al-fiṭr* that the head of the family has to pay this duty for dependent family members if they are on the other side of the ocean.⁶³ The sea is not considered a spatial factor that impacts the individual obligation in this case.

In contrast to the preceding case, the sea is accounted for as a spatial factor of differentiation in implementing the Islamic legal rule here. In a lengthy discussion in al-Izkawī’s *Jāmi’*,⁶⁴ as the dictum of Abū Sulaymān,⁶⁵ the case is contemplated of a man who gives merchandise (such as clothes) to somebody else so that he may purchase a servant for him. The time for deducting *zakāh* then arrives, and the person

⁵⁹ Al-Izkāwī, *Jāmi’ Ibn Ja’far*, 2/118.

⁶⁰ Al-Kindī, *Muṣannaḥ*, 5/185; cf. al-Kindī, *Bayān al-shar’*, 19/261, 263.

⁶¹ Al-Izkāwī, *Jāmi’ Ibn Ja’far*, 2/119.

⁶² Al-Kindī, *Muṣannaḥ*, 5/189.

⁶³ Abū l-Ḥawwārī, *Jāmi’ Abī l-Ḥawwārī*, 1/300.

⁶⁴ Al-Izkāwī, *Jāmi’ Ibn Ja’far*, 2/112; cf. al-Kindī, *Muṣannaḥ*, 5/189.

⁶⁵ Abū Sulaymān has yet to be identified. Al-Izkāwī mentions an Abū Sulaymān Hadād ibn Sa’īd al-Nizwī (5th/11th century), and it may be the same authority; see al-Izkāwī, *Jāmi’ Ibn Ja’far*, 2/114. The latter was *qāḍī* and *faqīh* from the Wilāyah of Nizwā; he was judge in Sohar in the era of Imām Rāshid ibn Sa’īd. Because of the time gap, it could either be a different scholar, or he is mentioned in a later redaction of the book.

(who was supposed to buy the servant) is absent behind the sea, and the client does not know whether he has purchased what he has been commissioned with or not. Therefore, he deducts his *zakāh* money but postpones paying *zakāh* on that particular merchandise. The man then returns, having already purchased what he was commissioned to buy. He asks him when exactly he purchased the servant. He is then informed that it may have been before or after he deducted the *zakāh*. Should he take his word for granted, regardless of whether he is trustworthy or not? And if he has purchased a servant boy or girl with this merchandise, and the owner of the merchandise wanted the slave girl to work in his house, should he immediately (today) pay for the value of the servant boy or for his entire wealth? The answer concludes that he should pay his *zakāh* on the wealth that he holds in his hands, not on what is absent, as he cannot be sure about whether that wealth is intact or has perished. Once his wealth returns to him, he should deduct the *zakāh* from it. Whatever he owns of labor slaves and has been purchased for him before *zakāh* was due, no *zakāh* needs to be paid; but he has to pay it on his capital for trading. The statement of the purchaser of slaves and slave girls is considered (regarding the time of purchase).

What about wealth that has been sent to the sea (for trading), and it takes a long time to come back to him? How is *zakāh* to be deducted from this wealth? The *Muṣannaḥ* quotes differences of opinion: *Zakāh* needs to be paid for one year, for every single year that has passed, or for every year that has passed minus the *zakāh* that was due.⁶⁶

An important and pervasive aspect of the Ibāḍī school is mentioned in al-Izkawī's *Jāmi'*: What about taxation in the absence of the rightful Imām (*al-imām al-ʿādil*)? On the authority of Abū Marwān, the Wālī of Sohar in the 2nd/8th century stated the following:

If their authority has perished and goods are brought to them during a time of absence of authority, it is preferable that the same amount is taken from these goods that has been taken previously by their Sultan. And if goods of the *ḥarbī* polytheist are brought (to Oman), and there is no rightful Imām who would tax it in Oman; if they tax the goods of the Muslims even if there is no authority (Sultan), one of the Muslims who is in charge of them taxes them in the province

⁶⁶ Al-Kindī, *Muṣannaḥ*, 5/194.

(*miṣr*) they approach from Oman if there is no Imām, and he allots what he takes from them to the poor Muslims, and the state's strength (*‘izz al-dawlah*) and Islam and it will be fine so Allah wills. And the same applies, in my opinion, to the *jizyah* of *abl al-dhimmah* in Oman if there is no authority.⁶⁷

Missing Persons (*al-Mafqūd fī l-baḥr*)

Cases of missing persons and their treatment in the *fiqh* encyclopedias clearly show a relation to the sea. Ibn Ja‘far defines this as follows: The missing person is the one who is on board a ship, the ship wrecks, and it is unknown whether he was saved or drowned.⁶⁸ The *Muṣannaf* specifies, on the authority of Muḥammad ibn Maḥbūb, that “The missing person is the one who was on board a ship, and the ship wrecks at a place, and it gets destroyed, or who falls off a ship in the sea or war and he is left behind”.⁶⁹ The possibly earliest definition of the missing person can be traced back to al-Rabī’s *masā’il*, who defines the *mafqūd* as “a man who travels on board a ship, the ship wrecks, and he is not seen after that, neither dead nor alive; or he gets caught up between the lines in war, or there is heavy fighting that then wears off, and he is not seen dead or alive.”⁷⁰

⁶⁷ Al-Izkāwī, *Jāmi‘ Ibn Ja‘far*, 2/118. Compare the description of events in al-Sālīmī’s *Tuḥfah* (106): Al-Faḍl ibn al-Hawwārī was asked about the case of Shabīb, and he mentioned that he was appointed as tax (*zakāh*) collector in the villages; “and when the Sultan came, he left it and distanced himself (*i’tazala*). I said: Maybe his distancing was in a year where no tax was collected from the villages, and he only collected taxes when he was able to protect (the villages) and whenever he was able to protect them, he collected taxes to the possible extent, and when he could not protect them, he refrained from doing so. Abū l-Hawwārī is quoted to have confirmed allegiance to Shabīb and his followers and a disassociation to whoever disassociates with him.

⁶⁸ Al-Izkāwī, *Jāmi‘ Ibn Ja‘far*, 6/337.

⁶⁹ Al-Kindī, *Muṣannaf*, 13/462.

⁷⁰ Al-Ḥasan ibn ‘Alī ibn Ḥumayd al-Bādī, *Dbikr masā’il mim mā su‘ila ‘anbu al-Rabī ibn Ḥabīb* (Muscat: College of Sharīa Studies, Undergraduate Thesis, 2019), 85.

The *Jāmi' al-Faḍl* (on the authority of Maḥraz ibn Muḥammad⁷¹) mentions a real-life case in this context:

A lady came to 'Abd al-Raḥmān ibn al-Ḥasan, and three men had a case against her, everyone claiming he was her husband. The judge asked her, and she confirmed that they were all her husbands, and he asked her about the story. She said: The first one married me and travelled the ocean, and I waited for some time; then his obituary reached me, and I waited for two years or more. Then someone else married me, and he travelled the sea. I stayed for some time, then his obituary reached me, and I waited for some time. Then the last one here married me. The judge then required evidence. She said: I had the evidence, but maybe (the witnesses) and the slaves are all dead now. 'Abd al-Raḥmān told her: Choose whom you like among them, and she chose the last one. He forwarded a proof (of being married), and they accepted the verdict and died.⁷²

The sea is given transformative consideration in the following cases. Abū l-Ḥawwārī indicates that one who is absent on the sea does not have his share of a *waṣiyyah* (testament) allotted, unless he moved out for *ḥajj* or *jibād* (which are seen as legitimate reasons to travel the sea).⁷³ Along the same line of argumentation, *Jāmi' al-Faḍl*⁷⁴ refers to the dictum of Abū Marwān regarding the right to *shuf'ah* (preemption) of a person who travelled the sea and has a right to preemption in land (*mushā'ah*):

⁷¹ A Maḥraz ibn Muḥammad is yet to be identified, but he is mentioned as a scholarly authority in Ibn al-Ḥawwārī, *Jāmi' al-Faḍl*, 3/109, 2/107 and al-Kindī, *Muṣannaf*, 19/601.

⁷² Ibn al-Ḥawwārī, *Jāmi' al-Faḍl*, 1/16f. The same case is mentioned, on the same authority of Maḥraz ibn Muḥammad, in al-Kindī, *Muṣannaf*, 19/601; al-Kindī, *Bayān al-sbar*, 47/259.

⁷³ For a discussion of the legal rule on the absent person at sea or behind the ocean (*al-ghā'ib*), see al-Kindī, *Muṣannaf*, 9/385ff; 16/213; see also 13/221: a legacy (*waṣiyyah*) of relatives is not forwarded to an absent person who travelled the sea and his place is unknown.

⁷⁴ Ibn al-Ḥawwārī, *Jāmi' al-Faḍl*, 1/245; identical to al-Kindī, *Muṣannaf*, 14/642.

If the possession in question comes under rights,⁷⁵ there is no right to preemption if he travelled by sea and did not intend residence (across the sea). If he is a resident (on the other side of the ocean), he does not have a right to preemption. If he is traveling to Mecca as a pilgrim and does not reside there, he needs to stay in Mecca for a full lunar year; then, he will have his preemption right to land (*mushāʿ*).

On someone else's authority, it was mentioned that he does not have a right to preemption other than in *mushāʿ* if he has left the province (*miṣr*). Others said that he does not have this right unless he travelled for *ḥajj*, as *gbāzī* or *mawālī*. Still others said that he does not have this right unless he travelled for *ḥajj* or as *gbāzī*.⁷⁶

There may be various considerations in the derivation of this legal rule. Apparently, some scholars considered only *ḥajj* and *jihād* as legitimate reasons for traveling by sea;⁷⁷ therefore, individual (financial) rights need to be guaranteed in this case only or, by extension, to the *mawlā* who is obedient to his master. Another reason could be the lack of (Omanī) state authority on the other side of the sea or the hardship involved in following someone to redeem his benefits. The sea is considered a spatial factor in all of these cases but with different levels of argumentation.

⁷⁵ [*baqāʿiq*: according to the preceding explanation: *wa-l-baqāʿiq mītl al-ṭariq wa-l-sāqial*]

⁷⁶ Al-Kindī, *Muṣannaf*, 14/642; cf. 14/643 and the son's right to preemption. See also: "If someone bequeaths date palms to the poor in his area, only those people who are present at the time of distribution of the dates will receive their share, whoever travelled the sea will not receive his share unless he travelled for military purposes (*gbāzī*) or *ḥajj*"; al-Kindī, *Muṣannaf*, 12/129. "If someone has debts with a person who travelled the sea, he does not have to follow them to cover his debts, unless they ask him to do so. If he declines in that case, he is sinful. Unless he does not have the means to cover his debts, he must follow them wherever they are and pay his debts once he finds the means after they have left"; al-Kindī, *Muṣannaf*, 12/381. He mentions a similar distinction concerning divorce (al-Kindī, *Bayān al-sharʿ*, 34/52): if someone intends to travel the sea, his wife can be given the right to divorce upon her request, unless he is a warrior.

⁷⁷ The *Muṣannaf* records the initial scholarly discouragement of travelling the sea to earn a living, other than for *ḥajj* and *jihād*, and it underlines the superior role of *jihād* at sea and protection of the coastlines; see al-Kindī, *Muṣannaf*, 8/38ff.

Conclusion

The earliest available *fiqh* compendia scrutinized for this study offer a variety of *aqwāl* (dicta) concerning Islamic legal rules related to the sea. The practical content and the personal involvement (as *qādī*, *wālī*, military leader) of these scholars, whether they were the authors of or scholarly references in the compendia, offer insight into some of the maritime rules practiced in the 2nd-3rd/8th-9th centuries and later. The main point of reference for the rules related to the sea is the early Imamate in Sohar with its scholarly authorities, among them Muḥammad ibn Maḥbūb, al-Waḍḍāḥ ibn ‘Uqbah, Abū Marwān, Abū Mu‘āwiyah ‘Azzān ibn al-Ṣaqr, Abū Qaḥṭān, ‘Amr ibn Sa‘īd, Abū ‘Uthmān, Sulaymān ibn al-Ḥakam, *Kitāb al-Ashyākḥ*, and finally al-Faḍl ibn al-Ḥawwārī, Abū l-Ḥawwārī, and al-Izkawī themselves. Compared to later compendia (here mainly *Bayān al-shar‘*, *al-Muṣannaḥ*), the discussion of many questions at hand was more detailed, and it referenced material of the early centuries that may not have been preserved in independent sources.

The available sources do not leave any doubt that what was implemented in the Indian Ocean and its littoral concerning legal rules (in trade, shipment, taxation, collision, found items, personal status, and many more) under Omanī control was nothing but the detailed Islamic legal rules. The earliest Ibāḍī *fiqh* encyclopedias testify to this. The implementation of these rules necessitated state authority within the areas under the rule of the Imām and along the trade routes. The general guidelines on any type of taxation, with its principle of *no taxation without protection*, had ample repercussions not only on maritime law and the taxation of incoming merchandise, as detailed herein, but also on *zakāh*, *jizyah*, and *kharāj* (*ṣāfiyah*).

State authority for the implementation of legal rules was important enough to discuss its absence, as some cases show. It is therefore to be expected that the very same Islamic legal rules that are discussed in the *fiqh* encyclopedias were implemented wherever the state (Imām) was strong enough to implement them, while provisions were taken for their implementation in case of the absence of state authority, as the discussion on taxation revealed.

If we were to extend this idea to other Muslim political entities along the coastline of the Indian Ocean, we would have a case for a strong presence of the Islamic legal rule in the area. More comparative

research on the legal dicta of Muslim scholars of different legal schools along the Indian Ocean littoral (Africa, India, and Southeast Asia) is needed to investigate this case.

The maritime legal dicta themselves are generally discussed within the relevant chapters (of transportation, taxation, and *shuḥḥ*) and are sometimes discussed explicitly in analogy (*qiyās*) to legal rules on land. In some instances, scholars would explicitly state that the sea is not considered to be a changing factor in the rule, while in some cases, it obviously was considered to be one. In cases related to *shuḥḥ*, *waṣiyyah*, and covering debts, the sea may have been seen as too difficult an obstacle, that is, too dangerous or time-consuming to overcome, or the reason for traveling the sea was not recognized as legitimate in the first place.

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