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Written Source of *al-Muwaṭṭa'*: *Risālat al-Farā'iḍ*

Muvaṭṭa'ın Yazılı Kaynağı: *Risâletü'l-Ferâ'iḍ*

Mansur KOÇİNKAĞ

Assoc. Prof., Academic Visitor,

Oxford University, Oriental Enstitute

mansur-kocinkag@hotmail.com

ORCID: 0000-0002-2589-945X

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Abstract

Significant studies have been conducted on the origins and development of Islamic law in the past years. However, in regard to the first century AH, a lack of solid identified references has raised doubts around the accuracy of the reported facts during this period. For this reason, we explored a new reliable document referred to as *Risālat al-Farā'iḍ*, from the first century. It is accepted that this work was first written by Zayd b. Thābit (d. 45/665) and then annotated by Abū al-Zinād (d. 130/748) who lived during both the first and second centuries. In this study, it will be determined that based on the similarity between *al-Muwaṭṭa'* and *Risālat al-Farā'iḍ* in nearly thirty-five paragraphs, *Risālat al-Farā'iḍ* has served as a source in the writing process of *al-Muwaṭṭa'*, besides, it has revealed consistent information about 'amal (practice) of ahl al-Medīna. Finally, through this document analysis, it will be revealed that the claim that the basic hadith collections are based not only on the oral narrations but also on the written documents will be more accurate.

Keywords: Islamic law, *Risālat al-Farā'iḍ*, *al-Muwaṭṭa'*, Zayd b. Thābit, Abū al-Zinād.

Öz

Son yıllarda İslam hukukunun kökeni ve gelişimi üzerine önemli çalışmalar yapılmaktadır. Bununla birlikte, hicrî birinci yüzyıl ile ilgili temel kaynakların olmayışı veya eksikliği dolayısıyla, bu dönemde rivayet edilen bilgilerin doğruluğu hakkında bazı şüpheler dile getirilmiştir. Bu nedenle, *Risâletü'l-Ferâ'iḍ* olarak adlandırılan yeni ve güvenilir eseri incelemenin önemli bir boşluğu dolduracağı kanaatindeyiz. Bu eserin, ilk olarak Zeyd b. Sâbit (ö. 45/665) tarafından kaleme alındığı ve daha sonra hem birinci hem de ikinci yüzyıllarda yaşayan Ebu'z-Zinâd (ö. 130/748) tarafından tefsir edildiği kabul edilir. Bu çalışmada, *Muvaṭṭa'* ile *Risâletü'l-Ferâiḍ'* arasındaki otuz beşe yakın paragraftaki benzerlikten hareketle *Risâlatü'l-Ferâiḍ*'in, *Muvaṭṭa*'ın yazımı sürecinde bir kaynak olarak hizmet ettiği ve ayrıca Medine ehlinin ameli hakkında önemli bilgiler içerdiği tespit edilecektir. Son olarak, bu risalenin analizi ile temel hadis koleksiyonlarının sadece şifâhî rivâyetlere değil, bununla beraber yazılı belgelere de dayandığına dair iddianın daha isabetli olduğu ortaya çıkacaktır.

Anahtar Kelimeler: İslam Hukuku, *Risâletü'l-Ferâ'iḍ*, *Muvaṭṭa'*, Zeyd b. Sâbit, Ebu'z-Zinâd.

Introduction[*]

The debate on the origins of Islamic law has mostly been of interest to Western researchers. However, over time, it has also attracted the attention of many Muslim researchers. There is a common opinion, first put forward by Ignaz Goldziher (d. 1921) and Joseph Schacht (d. 1969), that the Islamic law was formed by making use of other legal systems. According to Schacht, in the first century, Islamic law did not exist in technical terms yet. The legal law that existed during this period was a body of rules enacted by other legal systems, especially local custom and Umayyad administrative practice.[1] Schacht also claimed that the current legal system was Islamized with the Abbasids. In order to complete this project, hadiths were fabricated and given to the Prophet. Although Schacht's claims are revised from time to time, they continue to be widely accepted by western scholars.

David S. Powers argued against Schacht and stated that the Qur'ān -at least in inheritance law- played an important role in the formation of Islamic law. Thus, he challenged Schacht's thesis that the Qur'ān was only involved in the formation of Islamic law in the second stage.[2] Harald Motzki (d. 2019) also objected to some of Schacht's thesis and according to him, Schacht "estimated

[*] I would like to thank Prof. Christopher Melchert for his comments and TÜBİTAK for their financial support. I am grateful to Yasemin Margaret Rose and Mehmet Kurhan for proof reading.

[1] Ignaz Goldziher, *Muslim Studies* (Chicago: Aldine, 1971); Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford Univ. Press, London 1967). See also, Noel J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 34.

[2] David S. Powers, *Studies in Qur'ān and Hadīth: The Formation of the Islamic Law of Inheritance* (Berkeley: University of California Press, 1986). Goitein Shelomo Dov, pinpointed the birth hour of Islamic law at around the year 5 AH (627 CE) (Goitein, "Birth-Hour of Muslim Law? An Essay in Exegesis", *Muslim World*, 50/1 (1960), 27; "The Classical Period? Scripture, Origins, and Early Development", *Oxford Handbooks Online* (Oxford: 2017), 3-4. For view of Marion H. K., see *Body of Text: The Emergence of the Sunni Law of Ritual Purity* (Albany: State University of New York Press, 2002).

the beginnings of Islamic jurisprudence a good half to three-quarters of a century too late."[3]

The most serious criticisms against Schacht's thesis is voiced by Mustafa Azami (d. 2017) and Fuat Sezgin (d. 2018). They both claim that the main sources were based not only on oral information but also on written documents.[4] However, as the works written in the first up to the middle of the second century have not reached us (with a few exceptions), it is relatively difficult to trace this claim. Yet I can assume that *al-Farā'iḍ* examined in this study will fill an important gap in this context.

The present study consists of a short introduction and four sections. The first section contains general information about *Risālat al-Farā'iḍ* and authorship. The second section gives information about the written sources of *al-Muwaṭṭa'*. The third section presents information about *al-Farā'iḍ*, which is a written source of *al-Muwaṭṭa*. In the final title of this study, the parallels between *al-Muwaṭṭa'* and *al-Farā'iḍ* are given to prove that *al-Farā'iḍ* is one of the written sources of *al-Muwaṭṭa'*.

1. The Risālat al-Farā'iḍ and Authorship

According to historical sources, one of the first works is *al-Farā'iḍ* (inheritance law), which is claimed to belong to Zayd b. Thābit's (d. 45/665). Although it is not clear whether this book was written by him personally or not, it is important to note that it is annotated at the beginning of the second century. Thus, in this context, it will be useful to examine how this work is men-

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3 Harald Motzki, *The Origins of Islamic Jurisprudence Meccan Fiqh before the Classical Schools*, Trans. Marion H. Katz (Leiden: Brill, 2002), xi. However his objections consist of pulling dating a little earlier, and do not have a fundamental objection to Schacht's basic thesis about authenticity of hadiths (Motzki, *Analysing Muslim Traditions Studies in Legal, Exepetical and Maghāzī*, (Leiden: Brill, 2010), 234-235).

4 Fuat Sezgin, *Buhari'nin Kaynakları Hakkında Araştırmalar*, (Istanbul: Ibrahim Horoz Yayınevi, 1956); *Tārīkh al-turāth al-'arabī*, trans. Mahmud Fahmī (Saudi Arabia: Jāmi'at al-Imām Muhammad b. Sa'ūd al-Islāmiyyah, 1411/1991), 3/3-6; Mustafa Azami, *Dirāsāt fī al-hadīth wa tarīkh tadwīnihā* (Beirut: al-Maktab al-Islāmī, 1400/1980). See also, Gregor Schoeler, "İslam'ın İlk Döneminde Bilimlerin Sözlü veya Yazılı Rivayeti Sorunu", (Çev. Nimetullah Akın), *AÜİFD*, 47 (2007), 2, 171-196; Nabia Abbott, *Studies in Arabic Literary Papyri II: Qur'ānic Commentary and Tradition*, Chicago: The University of Chicago Press, 1967.

tioned in classical literature and whether this work has any doubts with authorship.

It is stated in various sources that Zayd b. Thābit, who was born in 611, was an expert in the field of inheritance law and was therefore called *al-faraḍī*.[5] He was a translator during the Prophet's period and translated official letters into foreign languages. Besides, it can be said that inheritance law requires knowledge of mathematics and Zayd's mathematics knowledge is good. Because he was commissioned in the counting and division of the booty goods from time to time.[6] Also, the following events show that he was an important person during the Companions period. He was the head of the group assigned to the *Muṣḥaf* project in the period of Caliph Abū Bakr (d. 13/634) and the *Istinsākh* project in the period of Caliph Osman (d. 35/656).[7]

Ibn Shihāb al-Zuhrī's (d. 124/742) statement "If Zayd b. Thābit had not written the law of inheritance (farā'iḍ), the farā'iḍ would have disappeared"[8] shows that Zayd did indeed write a text regarding inheritance law. Also, when Sufyān al-Thavrī (d. 161/778) was asked "If you become a judge, whose opinion would you adhere to when making judgments about inheritance law?" he replied "I would base such judgments on the opinions of Zayd b. Thābit."[9] This reveals that in the middle of the second century, the views of Zayd on inheritance law were known even by Iraqi scholars. As it is known, the Hijāzis regarded the views of Zayd, while the Iraqis regarded the views of Ali b. Abī Ṭālib and Abd Allāh b. Masʿūd in inheritance law.

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5 Ibn al-Asīr, *Usd al-ghābah fī maʿrifat al-ṣahābah* (Beirut: Dār al-Fikr, 1409/1989), 2/126-127, 6: 283.

6 Ibn Saʿd, *al-Ṭabaqāt al-kubrā* (Beirut: Dār al-kutub al-ʿilmiyyah, 1410/1990), 2/82; Shams al-Dīn Abū al-Muẓaffar Sibṭ Ibn al-Javzī, *Mir'āt al-zamān* (Damascus: Dār al-Risālah al-ʿālamiyyah, 1434/2013), 4/131.

7 Ibn Abd al-Barr, *al-Istīʿāb fī maʿrifat al-aṣhāb* (Beirut: Dār al-Cayl, 1412/1992), 2/539.

8 Yaʿqūb al-Fasawī, *al-Maʿrifah wa al-tārīkh*, ed. Akram Ḍiyā al-ʿUmarī (Beirut: Mu'assasat al-Risālah, 1401/1981), 1/486; al-Bayhaqī, *al-Sunan al-kubrā* (Beirut: Dār al-kutub al-ʿilmiyyah, 1424/2003), 6/347.

9 al-Dāraqutnī, *al-Sunan*, ed. Shuʿayb al-Arnāūt et al., Beirut; Mu'assasat al-Risālah, 1424/2004,5: 145.

The statement of al-Shāfi'ī (d. 204/820) on an issue "This is Zayd's opinion, we accepted his opinions about the majority of inheritance law"[10] should also be evaluated in the same context. Due to the widespread of Zayd's views, al-Shāfi'ī just said: "we accepted his views in inheritance law". So, he did not include inheritance law in his *al-Umm*. Regarding this particular matter, al-Juwaynī (d. 478/1085) stated:

When al-Shāfi'ī examined controversial issues [on inheritance law], he did not see any significant difference [between Zayd and himself]. Therefore, he preferred to depend on the views of Zayd b. Thābit and for this reason, he didn't write an inheritance law section as people already knew Zayd's views on inheritance law. He [just] mentioned some of the issues of inheritance law throughout his book [*al-Umm*]. [Then] al-Muzanī collected these issues and added Zayd's views to them.[11]

In *al-Mukhtaṣar*, al-Muzanī (d. 264/878) says "[The issues I will mention here] are the summary of the law of inheritance that I heard from al-Shāfi'ī, took from *al-Risālah*, and wrote according to his opinion".[12] The source referred by al-Muzanī as *al-Risālah* may be the work of al-Shāfi'i or Zayd's *al-Risālat*. There is a strong possibility that al-Muzanī refers to *Risālat al-Farā'iḍ*, as there is not much content regarding inheritance law in al-Shāfi'ī's *al-Risālah*.

Zayd b. Thābit's (d. 45/665) *al-Farā'iḍ* reached us with comments of Abū al-Zinād (65-130/684-748), and it was published in 2018 by myself with an editorial critique.[13] This work, as a whole, can be found in Sa'īd b. Manṣour's (d. 227/847) *al-Sunan* and in al-Bayhaqī's (d. 458/1066) *al-Sunan al-ṣaghīr*.[14] al-Bayhaqī also quotes from this work in his books *al-Sunan al-kubrā* and *Ma'rifat*

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10 al-Shāfi'ī, *al-Umm*, ed. Rif'at Fawzī (Manṣourah: Dār al-Wafā, 2001), 5/174.

11 al-Juwaynī, *Nihāyat al-maṭlab fi dirāyat al-madhhab*, ed. 'Abd al-'Azīm al-Dīb (s.l.: Dār al-Minhāj, 1428/2007), 9/9.

12 al-Muzanī, *al-Mukhtaṣar*, ed. Muḥammad Abd al-Qādir (Beirut: Dār al-kutub al-'arabiyyah, 1419/1998), 186.

13 Mansur Koçinkağ, "Risālat al-Farā'iḍ li Zayd b. Thābit ma'a sharḥihā li Abī al-Zinād", *Tasavvur: Tekirdag Theology Journal*, 2018, 4, 329-353.

14 Sa'īd b. Manṣour, *al-Sunan*, ed. Habīb al-Rahmān al-A'zamī (India: Dār al-Salafiyyah, 1982), 1/28-37; al-Bayhaqī, *al-Sunan al-Saghīr*, ed. Abd al-Mu'ṭī al-Qal'ajī (Pakistan: Cāmi'at al-Dirāsāt al-Islamiyyah, 1410/1989), 2/355-361.

al-sunan wa al-āthār.[15] He refers so much to *al-Farā'iḍ* in the booth too, almost contains all of it. In addition, Ibn al-Mundhir's (d. 318/930) book, *al-Avsat fi al-sunan*, contains many long quotations directly from this work.[16]

Sa'īd b. Manṣour includes this work (*al-Farā'iḍ*) under the title of "bāb usūl al-Farā'iḍ" with the title "Haddathanā Abd al-Rahmān b. Abī al-Zinād 'an abīhi 'an Hkārija b. Zayd b. Thābit". At the beginning of *Risālat al-Farā'iḍ*, there is the following statement: "All the meanings and principles (uṣūl) of this farāiḍ were adapted from Zayd b. Thābit. Abū al-Zinād annotated it in accordance with the meanings (views) of Zayd b. Thābit."[17] Also, al-Bayhaqī transmits *al-Farā'iḍ* -claiming that the work belongs to Zayd and Abū al-Zinād- by the same phrases.[18]

When *al-Farā'iḍ*'s chain (isnād) is examined, it can be seen that Abū al-Zinad's son, Abd al-Rahmān (d. 174/790), transmitted it from his father. In the chain of Ibn al-Mundhir and al-Bayhaqī, Muhammed b. al-Bakkār transmitted it from Abd al-Rahmān b. Abī al-Zinād. However, in the chain of Sa'īd b. Manṣour, himself narrated it from Abd al-Rahmān. Ibn Abī al-Zinād, who was one of Sa'īd's leading teachers, and Sa'īd narrated 44 narrations from him in *al-Sunan*. Additionally, Ibn al-Khayr al-Ishbīlī (d. 575/1179) mentions *al-Farā'iḍ* and states that it belongs to Zayd b. Thābit and also he includes the chain of the book from Abū al-Zinād till himself.[19] When al-Ishbīlī's chain is

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15 al-Bayhaqī, *al-Sunan al-kubrā*, ed. M. Abd al-Qādir 'Atā (Beirut: Dār al-kutub al-'ilmiyyah, 1424/1991), 6/350, 369, 371, 372, 376, 379, 380, 383, 388, 391, 400, 410; *Ma'rifat al-Sunan wa al-āthār*, ed. Abd al-Mu'ṭī al-Qal'ajī (Beirut: Dār Qutaybah, 1412/1991), 9/112, 119-123, 125, 128, 134.

16 Ibn al-Mundhir, *al-Avsat fi al-sunan wa al-icmā' wa al-ikhtilāf*, ed. Muḥy al-dīn al-Bakkār et al. (Egypt: Dār al-Falāh, 2009/1430), 7/388, 393, 413, 416, 421, 425, 448, 454.

17 سَعِيدٌ قَالَ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ ، عَنْ أَبِيهِ ، عَنْ خَارِجَةَ بْنِ زَيْدِ بْنِ ثَابِتٍ ؛ إِنَّ مَعَانِيَ هَذِهِ الْفَرَائِضِ كُلِّهَا وَأُصُولَهَا عَنْ زَيْدِ بْنِ ثَابِتٍ ، وَأَبُو الزِّنَادِ فَسَّرَهَا عَلَى مَعَانِي زَيْدِ بْنِ ثَابِتٍ (سعيد بن منصور، السنن، 45/1)

18 [قال البيهقي:] ...مُحَمَّدُ بْنُ بَكَّارٍ أَبُو عَبْدِ اللَّهِ، ثنا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ ذَكْوَانَ، عَنْ أَبِيهِ عَبْدِ اللَّهِ بْنِ ذَكْوَانَ أَبِي الزِّنَادِ، عَنْ خَارِجَةَ بْنِ زَيْدِ بْنِ ثَابِتٍ رَضِيَ اللَّهُ عَنْهُ، عَنْ أَبِيهِ زَيْدِ بْنِ ثَابِتٍ الْأَنْصَارِيِّ أَنَّ مَعَانِيَ هَذِهِ الْفَرَائِضَ، وَأُصُولَهَا كُلَّهَا عَنْ زَيْدِ بْنِ ثَابِتٍ، وَأَمَّا التَّفْسِيرُ فَتَفْسِيرُ أَبِي الزِّنَادِ عَلَى مَعَانِي زَيْدِ بْنِ ثَابِتٍ (البيهقي، السنن الصغير، 355/2).

19 Ibn al-Khayr al-Ishbīlī, *al-Fahrasah*, ed. Muhammad Fuād (Beirut: Dār al-kutub al-'arabiyyah, 1419/1998), 230.

examined, it can be seen that he reaches the *al-Farā'iḍ* through Saʿīd b. Manṣour. Ibn al-Nadīm, on the other hand, attributes a work called *al-Farā'iḍ* to Ibn Abī al-Zinād who is a transmitter of the *al-Farā'iḍ*.[20] Therefore, if there is no other work that belongs to Ibn Abī al-Zinād, such an error could have occurred due to his position as a transmitter of the work.

Although Fuat Sezgin mentions *al-Farā'iḍ*, he is not aware that the work has completely survived till the present day. Also, he says "It appears that the commentator (Abū al-Zinād) first mentions the body of the book and then begins explaining it with the word 'he said (qāla)'".[21] Nevertheless, his statement does not reflect reality as there is no distinction between the original text for Zayd and the comments of Abū al-Zinād. Throughout the whole book, there is only one mention of "qāla Abū al-Zinād".

After all, it can be said that *al-Farā'iḍ* doesn't have any problem and doubt about authorship (Abū al-Zinād). Aside from the proofs mentioned so far, it is important to compare the inheritance law section of *al-Muwaṭṭa'* - which is accepted as one of the first written texts of the Hejāz jurisprudence- with *Risālat al-Farā'iḍ* later in this study.

2. Is *al-Muwaṭṭa'* Based Only on Oral Narratives or Written Sources too?

Even though Azami claims that *al-Muwaṭṭa'* was written earlier, it is accepted that it was written around 160 AH on the basis of widespread acceptance[22] because al-Qādī 'Iyāḍ states that although *al-Muwaṭṭa'* was written by the order of Caliph Manṣūr (d. 158/775), it was completed after his death.[23]

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20 Ibn al-Nadīm, *al-Fihrist* (Beirut: Dār al-Maʿrifah, 1417/1997), 278.

21 Fuat Sezgin, *Tārīkh al-turāth al-ʿarabī*, 3/6.

22 See, Koçinkağ, *Erken Dönem İslam Hukuk Düşüncesinde Re'y ve Hadis*, (İstanbul: Rağbet Yayınları, 2018), 216-220.

23 al-Qādī Iyaḍ, *Tartīb al-madārik wa taqrīb al-masālik* (Morocco: Matbaʿat Fadālah, 1965-1983), 2/71. For discussions on the date when *Muwaṭṭa'* was written, see. Rahile Yılmaz, *Modern Hadis Tartışmaları Bağlamında Muvatta'daki Mürsel Rivâyetler*, Istanbul: MÜSBE, 2014, 46-112; Kenan Oral, *Muvatta'ın Oluşum Süreci Nüsha Farklılıkları ve Nedenleri*, Ankara: AÜSBE, 2020, 115-134.

The emphasized point here is what sources did Mālik use while compiling *al-Muwaṭṭa'*? It is recorded that during the Companions period some risālahs about zakāh, blood money (diyah), and farāiḍ (inheritance law) were written. It is highly likely that Mālik utilized these early works. As a matter of fact, in *al-Muwaṭṭa'*, it is stated that Malik had access to *Kitāb al-Sadakah* (zakah) which was written during the time of Caliph 'Umar and he quoted from it.[24]

Besides, when Mālik dies, the presence of "Kutub (books) ahl al-Medīna" in his house supports the same claim. For example in an anecdote transferred from the Mālik's son, there are seven chests of documents in the house of Mālik about books of Ibn Shihāb al-Zuhrī and ahl al-Medīna.[25] Also, al-Dāraqutnī (d. 385/995) while mentioning Sa'īd b. Dāvud al-Qurashī, stated that he narrated a written document of Abū al-Zinād from Mālik (yarwī ayḍan 'an Mālik nuskhatan 'an Abī al-Zinād).[26] This example is very important to show that Mālik has received written documents from Abū al-Zinād.

Abd al-Azīz b. Abd Allāh al-Mājishūn (d. 164/780) was one of the scholars who contributed to the field of Muwaṭṭa' literature before Mālik. When Mālik saw this work, he checked it out and stated that "It is a good book. ut if I were him, I would have included the narrations first [before 'amal ahl al-Medīna]."[27] As a matter of fact, when the *Kitab al-Hajj*, which is claimed to be part of *al-Muwaṭṭa'* of Abd al-Azīz al-Mājishūn, is examined it can be seen that there is only one hadith with isnād.[28] However, the same part of Mālik's *al-Muwaṭṭa'* is hadith-isnad centered.[29] This shows the related anecdote of Mālik is compatible with the content of *Kitab al-Hajj*.

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24 Mālik, al-Zakāh 23, 24. Also, see for some sources: Mālik, al-Zakāh 18, 20, 23, 24, 39, al-Ḥudûd, 27.

عَنْ مَالِكٍ، أَنَّهُ قَرَأَ كِتَابَ عُمَرَ بْنِ الْخَطَّابِ فِي الصَّدَقَةِ، قَالَ: فَوَجَدْتُ فِيهِ...

25 al-Qādī 'Iyāḍ, *Tartīb al-madārik*, 1/186-187.

26 al-Dāraqutnī, *al-Mu'talif wa al-mukhtalif* (Beirut: Dār al-Gharb al-Islamī, 1406/1986), 3/1141; Qādī Iyaḍ, *Tartīb al-madārik*, 3/157. Although al-Dāraqutnī mentioned this document, he stated that there are hadiths only transmitted from him (garā'ib).

27 al-Qādī 'Iyāḍ, *Tartīb al-madārik*, 2/75.

28 al-Mājishūn, Abd al-Azīz, *Kitāb al-Hajj* (Beirut: Dār Ibn Hazm, 2007), 179-180.

29 I mean by the concepts of "hadith-centered" and "ra'y-centered" that if a text is constructed by transferring hadiths, it will be hadith-centered, if it is expressed by author's own sentences, it will be ra'y-centered.

Given the fact Mālik was asked whether there was any necessity to write this kind of work or not, as there were several examples of al-Muwaṭṭa', shows some works existed in Medīnah before him.[30] Also, Ibn Abī Zi'b's *al-Muwaṭṭa'* which is estimated to have been written before Mālik's *al-Muwaṭṭa'*, is much more voluminous. Last but not least, various works regarding the 'amal of Medīna were written before Mālik's *al-Muwaṭṭa'* and Mālik was aware of them. This claim will be clearer with the further comparative examples presented in this study.

3. Written Source of *al-Muwaṭṭa'*: *Risālat al-Farā'iḍ*

Abū al-Zinād whose full name is Abd Allāh b. Dhakwān al-Qurashī al-Madanī is an expert in the account and author of *al-Farā'iḍ*. According to Ali b. al-Medīnī (d. 234/848), Abū al-Zinād was one of the four great scholars of Medīna who came after the old Successors (kibār al-tābi'īn).[31] Abū al-Zinād was born in around 65/684 and died in 130/748. When he passed away, his student Mālik was 37 years old. Mālik narrated 67 narrations from him by mentioning his name directly in *al-Muwaṭṭa'* (via Yaḥyā), and also included his views of fiqh from time to time.[32]

Some terms and words of *al-Farā'iḍ* and *al-Muwaṭṭa'* will be given in further paragraphs. With a clear examination of these terms and words, it can be seen that there are some superficial differences that are not essential such as the transmission of the same book. Therefore, when the *al-Farā'iḍ* was independently published (2018), the editor of the work evaluated *al-Muwaṭṭa'* as a nuskha (copy) of *al-Farā'iḍ*, thus he noted the differences of *al-Muwaṭṭa'* in the footnote. As the related section of *al-Muwaṭṭa'* occasionally differs in terms of subject organization, it gives the impression of a non-uniform nuskha (copy) of *al-Farā'iḍ*.

The exemplary paragraphs in this study will be assigned to a different number. Thus, the comparisons will be evaluated by mentioning each para-

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30 al-Suyūṭī, *Tadrīb al-rāwī*, ed. Abū Qutaybah (s.l.: Dār Ṭaybah, n.d.), 1/93; Kattānī, *al-Risālah al-mustaṭrafah*, ed. Muhammed al-Muntasir (Dār al-Bashāir al-Islāmiyyah, 1421/2000), 9.

31 al-Dhahabī, *Siyar a'lām al-nubalā*, ed. Shu'ayb al-Arnāūt et al. (Beirut; Mu'assasat al-Risālah, 1405/1985), 5/445-446.

32 See Mālik, al-Buyū', 66.

graph number. However, as the similarities can be noticed at the first glance, detailed information will not be included about each paragraph. Instead, the reader will be guided to investigate the relevant table.

The expressions used by Mālik in paragraphs 1 and 2 which contain the inheritance shares of spouses (husband or wife) are almost the same as those used in *al-Farā'iḍ*. However, Mālik approached the issue by basing on a verse in the continuation of the subject. Paragraphs 3-6, in which the inheritance of mother is addressed show some differences that are not important. Again here Mālik bases the subject on a verse and then, determines the meaning of the word "al-ikhwah" mentioned in the verse by sunnah (maḍat al-sunnah).

The statements of paragraphs 7 and 8, in which the inheritance shares of siblings who have the same mother, are largely the same or similar, although there are some additional statements. It should be noted that Mālik cites these statements by using the term *al-amr 'indanā*. Therefore, Malik's attitude also gives a clue about the origin of the 'amal (practice) located in Medīna. Here again, unlike Abū al-Zinād, Mālik bases the matter on a verse.

In paragraph 9, in which the inheritance shares of the father addressed, the situation does not differ from previous paragraphs as Mālik uses the same or similar words. He cites the information by the term "al-amr al-mujtama'u 'alayh 'indanā, alladhī lā ikhtilāfa fīh, wa alladhī adraktu 'alayh ahl al-'ilm [bi baladinā]".

In paragraphs 10-14, in which the inheritance shares of siblings whose parents are same, Mālik approaches the subject using the same or similar words and transfers this information by the term "al-amr al-mujtama'u 'alayh 'indanā". He also bases the subject on the relevant verse at the end of the matter, unlike *al-Farā'iḍ*.

The situation is no different in paragraphs 15-18, in which the inheritance shares of siblings whose parents are the same is mentioned. Here again, Mālik approaches the subject using the same or similar words. However, he gives this information with the form "al-amr 'indanā". In paragraphs 19-22, in which the inheritance shares of the grandfather are addressed, the subject is handled with the same words and the words have largely found compatible, including the *Akdariyyah* issue. This information is conveyed alongside by

using the term "al-amr al-mujtamaʿu ʿalayh ʿindanā, wa alladhī adraktu ʿalayh ahl al-ʿilm bi baladinā".

In paragraphs 23-25, in which the inheritance shares of the siblings with the grandfather are discussed, Mālik deals with the subject using the same or similar words. In paragraphs 26-27, in which the grandmother's inheritance shares are addressed, the issue is found to be mentioned using similar statements. Here, the issue is approached after the expression "al-amr al-mujtamaʿu ʿalayh ʿindanā, alladhī lā ikhtilāfa fīh, wa alladhī adraktu ʿalayh ahl al-ʿilm bi baladinā". When paragraph 27 is examined in detail, it is found that the statements of Abū al-Zinād have been directly transferred in *al-Muwaṭṭa'* without any mention of him. Most likely, Malik did not benefit directly from Zayd's *al-Farā'iḍ*, he may be benefited from Abū al-Zinād's book. Another possibility might be that Abū al-Zinād did not contribute much to Zayd's *Risālah*, so Mālik quoted directly from Zayd's *al-Risālah*. However, why did Malik give this information without mentioning the name of Abū al-Zinād or Zayd b. Thābit?

The paragraphs 28-31 in which the subject of *'aṣabah* is also approached using the same or similar phrases from the composition of the subject to the selected pronouns. Even paragraphs 29-31, which are explanatory for the method to be applied to similar issues, are conveyed with almost the same words. This information is also given with the term "al-amr al-mujtamaʿu ʿalayh ʿindanā, alladhī lā ikhtilāfa fīh, wa alladhī adraktu ʿalayh ahl al-ʿilm bi balladinā".

The same words are largely used in the last two paragraphs that refer to *dhawilarhām* and it is found to be given under the form "al-amr al-mujtamaju ʿalayh ʿindanā, alladhī lā ikhtilāfa fīh, wa alladhī adraktu ʿalayh ahl al-ʿilm bi baladinā". In addition, the fact that Abū al-Zinād mentions this book saying "fī hādhā al-kitāb" at the end of the *Risālat al-Farā'iḍ*, can be considered as an important detail as the same wording takes place in the relevant section of *al-Muwaṭṭa'*.

4. Similarities Between *al-Muwaṭṭa'* and *Risalat al-Farā'iḍ*

It would be more beneficial to present similarities between the two sources to the benefit of the readers with their original expressions. Therefore,

in the continuation of the subject, taking into account the order of *al-Farā'iḍ*, the statements in the 35 paragraphs will be given exactly by the table.

Tablo 1: Text Comparison of *al-Muwaṭṭa'* and *al-Farā'iḍ*

رسالة الفرائض	موطأ مالك (رواية يحيى)
1. يَرِثُ الرَّجُلُ مِنِ امْرَأَتِهِ إِذَا هِيَ لَمْ تَتْرُكْ وَلَدًا، وَلَا وَلَدَ ابْنٍ النِّصْفَ، فَإِنْ تَرَكَتْ وَلَدًا، أَوْ وَلَدَ ابْنٍ، ذَكَرًا أَوْ أُنْثَى، وَرِثَهَا زَوْجُهَا الرُّبُعَ، لَا يَنْقُصُ مِنْ ذَلِكَ شَيْئًا (339).	1. وَمِيرَاثُ الرَّجُلِ مِنِ امْرَأَتِهِ إِذَا لَمْ تَتْرُكْ وَلَدًا، وَلاَ وَلَدَ ابْنٍ النِّصْفُ، فَإِنْ تَرَكَتْ وَلَدًا، أَوْ وَلَدَ ابْنٍ، ذَكَرًا كَانَ أَوْ أُنْثَى، فَلِزَوْجِهَا الرُّبُعُ مِنْ بَعْدِ وَصِيَّةٍ تُوصِي بِهَا أَوْ دَيْنٍ (2: 505).
2. وَتَرِثُ الْمَرْأَةُ مِنْ زَوْجِهَا إِذَا هُوَ لَمْ يَتْرُكْ وَلَدًا، وَلَا وَلَدَ ابْنٍ الرُّبُعَ، فَإِنْ تَرَكَ وَلَدًا، أَوْ وَلَدَ ابْنٍ وَرِثَتْهُ امْرَأَتُهُ الثُّمُنَ (339).	2. وَمِيرَاثُ الْمَرْأَةِ مِنْ زَوْجِهَا، إِذَا لَمْ يَتْرُكْ وَلَدًا، وَلاَ وَلَدَ ابْنٍ الرُّبُعُ، فَإِنْ تَرَكَ وَلَدًا، أَوْ وَلَدَ ابْنٍ، ذَكَرًا كَانَ أَوْ أُنْثَى، فَلِامْرَأَتِهِ الثُّمُنُ (2: 505).
3. وَمِيرَاثُ الْأُمِّ مِنْ وَلَدِهَا إِذَا تُوُفِّيَ ابْنُهَا أَوِ ابْنَتُهَا فَتَرَكَ وَلَدًا أَوْ وَلَدَ ابْنٍ ذَكَرًا أَوْ أُنْثَى، أَوْ تَرَكَ اثْنَيْنِ مِنَ الْإِخْوَةِ فَصَاعِدًا، ذُكُورًا أَوْ إِنَاثًا مِنْ أَبٍ وَأُمٍّ، أَوْ مِنْ أَبٍ، أَوْ مِنْ أُمٍّ، السُّدُسُ (339).	3. وَمِيرَاثُ الأُمِّ مِنْ وَلَدِهَا، إِذَا تُوُفِّيَ ابْنُهَا أَوِ ابْنَتُهَا، فَتَرَكَ الْمُتَوَفَّى وَلَدًا أَوْ وَلَدَ ابْنٍ، ذَكَرًا كَانَ أَوْ أُنْثَى، أَوْ تَرَكَ مِنَ الإِخْوَةِ اثْنَيْنِ فَصَاعِدًا، ذُكُورًا كَانُوا أَوْ إِنَاثًا مِنْ أَبٍ وَأُمٍّ، أَوْ مِنْ أَبٍ أَوْ مِنْ أُمٍّ، فَالسُّدُسُ لَهَا (2: 506).
4. فَإِنْ لَمْ يَتْرُكِ الْمُتَوَفَّى وَلَدًا، وَلَا وَلَدَ ابْنٍ، وَلَا اثْنَيْنِ مِنَ الْإِخْوَةِ فَصَاعِدًا، فَإِنَّ لِلْأُمِّ الثُّلُثَ كَامِلًا، إِلَّا فِي فَرِيضَتَيْنِ (339).	4. فَإِنْ لَمْ يَتْرُكِ الْمُتَوَفَّى وَلَدًا، وَلاَ وَلَدَ ابْنٍ، وَلاَ اثْنَيْنِ مِنَ الإِخْوَةِ فَصَاعِدًا، فَإِنَّ لِلأُمِّ الثُّلُثَ كَامِلاً، إِلاَّ فِي فَرِيضَتَيْنِ فَقَطْ.
5. وَهُمَا: أَنْ يُتَوَفَّى رَجُلٌ وَيَتْرُكَ امْرَأَتَهُ وَأَبَوَيْهِ، فَيَكُونَ لِامْرَأَتِهِ الرُّبُعُ، وَلِأُمِّهِ الثُّلُثُ مِمَّا بَقِيَ، وَهُوَ الرُّبُعُ مِنْ رَأْسِ الْمَالِ (340).	5. وَإِحْدَى الْفَرِيضَتَيْنِ: أَنْ يُتَوَفَّى رَجُلٌ وَيَتْرُكَ امْرَأَتَهُ وَأَبَوَيْهِ، فَلِامْرَأَتِهِ الرُّبُعُ، وَلأُمِّهِ الثُّلُثُ مِمَّا بَقِيَ، وَهُوَ الرُّبُعُ مِنْ رَأْسِ الْمَالِ (2: 506).
6. وَ[الأخرى:] أَنْ تُتَوَفَّى امْرَأَةٌ، فَتَتْرُكَ زَوْجَهَا وَأَبَوَيْهَا، فَيَكُونَ لِلزَّوْجِ النِّصْفُ، وَلِأُمِّهَا الثُّلُثُ مِمَّا بَقِيَ، وَهُوَ السُّدُسُ مِنْ رَأْسِ الْمَالِ (340).	6. وَالأُخْرَى: أَنْ تُتَوَفَّى امْرَأَةٌ، وَتَتْرُكَ زَوْجَهَا وَأَبَوَيْهَا، فَيَكُونُ لِزَوْجِهَا النِّصْفُ، وَلأُمِّهَا الثُّلُثُ مِمَّا بَقِيَ، وَهُوَ السُّدُسُ مِنْ رَأْسِ الْمَالِ (2: 506).
7. وَمِيرَاثُ الْإِخْوَةِ لِلْأُمِّ: أَنَّهُمْ لَا يَرِثُونَ مَعَ الْوَلَدِ، وَلَا مَعَ وَلَدِ ابْنٍ، ذَكَرًا كَانَ أَوْ أُنْثَى شَيْئًا، وَلَا مَعَ الْأَبِ، وَلَا مَعَ الْجَدِّ أَبِي الْأَبِ (340).	7. مِيرَاثُ الإِخْوَةِ لِلأُمِّ: أَنَّ الإِخْوَةَ لِلأُمِّ لاَ يَرِثُونَ مَعَ الْوَلَدِ شَيْئًا، وَلاَ مَعَ وَلَدِ الأَبْنَاءِ، ذُكْرَانًا كَانُوا أَوْ إِنَاثًا شَيْئًا، وَلاَ يَرِثُونَ مَعَ الأَبِ، وَلاَ مَعَ الْجَدِّ أَبِي الأَبِ شَيْئًا (2: 507).
8. وَهُمْ فِي كُلِّ مَا سِوَى ذَلِكَ يُفْرَضُ لَهُمْ لِلْوَاحِدِ مِنْهُمُ السُّدُسُ، ذَكَرًا كَانَ أَوْ أُنْثَى. فَإِنْ كَانُوا اثْنَيْنِ فَصَاعِدًا، ذُكُورًا أَوْ إِنَاثًا، فُرِضَ لَهُمُ الثُّلُثُ يَقْتَسِمُونَهُ بِالسَّوَاءِ، لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَى (340).	8. وَأَنَّهُمْ يَرِثُونَ فِيمَا سِوَى ذَلِكَ، يُفْرَضُ لِلْوَاحِدِ مِنْهُمُ السُّدُسُ، ذَكَرًا كَانَ أَوْ أُنْثَى. فَإِنْ كَانَا اثْنَيْنِ فَلِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ، فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ، يَقْتَسِمُونَهُ بَيْنَهُمْ بِالسَّوَاءِ، لِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ (2: 507).
9. وَمِيرَاثُ الْأَبِ مِنِ ابْنِهِ وَابْنَتِهِ: إِذَا تُوُفِّيَ أَنَّهُ إِنْ تَرَكَ الْمُتَوَفَّى وَلَدًا	9. أَنَّ مِيرَاثَ الأَبِ مِنِ ابْنِهِ أَوِ ابْنَتِهِ: أَنَّهُ إِنْ تَرَكَ الْمُتَوَفَّى وَلَدًا، أَوْ

ذَكَرًا، أَوْ وَلَدَ ابْنٍ ذَكَرًا، فَإِنَّهُ يُفْرَضُ لِلْأَبِ السُّدُسُ، وَإِذَا لَمْ يَتْرُكِ الْمُتَوَفَّى وَلَدًا ذَكَرًا، وَلَا وَلَدَ ابْنٍ ذَكَرًا، فَإِنَّ الْأَبَ يُخَلَّفُ، وَيُبدأُ بِمَنْ شَرَكَهُ مِنْ أَهْلِ الْفَرَائِضِ، فَيُعْطَوْنَ فَرَائِضَهُمْ، فَإِنْ فَضَلَ مِنَ الْمَالِ السُّدُسُ وَأَكْثَرُ كَانَ لِلْأَبِ، وَإِنْ لَمْ يَفْضُلْ عَنْهَا السُّدُسُ فَأَكْثَرُ مِنْهُ فُرِضَ لِلْأَبِ السُّدُسُ فَرِيضَةً (340–341).

وَلَدَ ابْنٍ ذَكَرًا، فَإِنَّهُ يُفْرَضُ لِلأَبِ السُّدُسُ فَرِيضَةً، فَإِنْ لَمْ يَتْرُكِ الْمُتَوَفَّى وَلَدًا، وَلاَ وَلَدَ ابْنٍ ذَكَرًا، فَإِنَّهُ يُبدأُ بِمَنْ شَرَكَ الأَبَ مِنْ أَهْلِ الْفَرَائِضِ، فَيُعْطَوْنَ فَرَائِضَهُمْ، فَإِنْ فَضَلَ مِنَ الْمَالِ السُّدُسُ فَمَا فَوْقَهُ كَانَ لِلأَبِ، وَإِنْ لَمْ يَفْضُلْ عَنهُمُ السُّدُسُ فَمَا فَوْقَهُ فُرِضَ لِلأَبِ السُّدُسُ فَرِيضَةً (2: 506).

10. وَمِيرَاثُ الْإِخْوَةِ مِنَ الْأُمِّ وَالْأَبِ: [أنهم] لَا يَرِثُونَ مَعَ الْوَلَدِ الذَّكَرِ، وَلَا مَعَ وَلَدِ الِابْنِ الذَّكَرِ، وَلَا مَعَ الْأَبِ شَيْئًا. وَهُمْ مَعَ الْبَنَاتِ وَبَنَاتِ الْأَبْنَاءِ مَا لَمْ يَتْرُكِ الْمُتَوَفَّى جَدًّا أَبَا أَبٍ يُخَلِّفُونَ (342).

10. مِيرَاثُ الإِخْوَةِ لِلأَبِ وَالأُمِّ: أَنَّ الإِخْوَةَ لِلأَبِ وَالأُمِّ لاَ يَرِثُونَ مَعَ الْوَلَدِ الذَّكَرِ شَيْئًا، وَلاَ مَعَ وَلَدِ الِابْنِ الذَّكَرِ شَيْئًا، وَلاَ مَعَ الأَبِ دِنْيا شَيْئًا. وَهُمْ يَرِثُونَ مَعَ الْبَنَاتِ، وَبَنَاتِ الأَبْنَاءِ، مَا لَمْ يَتْرُكِ الْمُتَوَفَّى جَدًّا أَبَا أَبٍ، مَا فَضَلَ مِنَ الْمَالِ يَكُونُونَ فِيهِ عَصَبَةً (2: 508).

11. وَيُبْدَأُ بِمَنْ كَانَتْ لَهُ فَرِيضَةٌ، فَيُعْطَوْنَ فَرَائِضَهُمْ، فَإِنْ فَضَلَ بَعْدَ ذَلِكَ فَضْلٌ كَانَ لِلإِخْوَةِ لِلأُمِّ وَالأَبِ بَيْنَهُمْ عَلَى كِتَابِ اللَّهِ، إِنَاثًا كَانُوا أَوْ ذُكُورًا، لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ، وَإِنْ لَمْ يَفْضُلْ شَيْءٌ فَلَا شَيْءَ لَهُمْ (342).

11. وَيُبْدَأُ بِمَنْ كَانَتْ لَهُ فَرِيضَةٌ مُسَمَّاةٌ، فَيُعْطَوْنَ فَرَائِضَهُمْ، فَإِنْ فَضَلَ بَعْدَ ذَلِكَ فَضْلٌ كَانَ لِلإِخْوَةِ لِلأَبِ وَالأُمِّ، يَقْتَسِمُونَهُ بَيْنَهُمْ عَلَى كِتَابِ اللهِ، ذُكْرَانًا كَانُوا أَوْ إِنَاثًا، لِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ، فَإِنْ لَمْ يَفْضُلْ شَيْءٌ فَلاَ شَيْءَ لَهُمْ (2: 508).

12. فَإِنْ لَمْ يَتْرُكِ الْمُتَوَفَّى أَبًا، وَلَا جَدًّا أَبَا أَبٍ، وَلَا وَلَدًا، وَلَا وَلَدَ ابْنٍ ذَكَرًا وَلَا أُنْثَى، فَإِنَّهُ يُفْرَضُ لِلْأُخْتِ الْوَاحِدَةِ لِلْأُمِّ وَالْأَبِ النِّصْفُ (343).

12. قَالَ: وَإِنْ لَمْ يَتْرُكِ الْمُتَوَفَّى أَبًا وَلاَ جَدًّا أَبَا أَبٍ، وَلاَ وَلَدًا، وَلاَ وَلَدَ ابْنٍ، ذَكَرًا كَانَ أَوْ أُنْثَى، فَإِنَّهُ يُفْرَضُ لِلأُخْتِ الْوَاحِدَةِ لِلأَبِ وَالأُمِّ النِّصْفُ (2: 508).

13. فَإِنْ كَانَتَا اثْنَتَيْنِ فَأَكْثَرَ مِنْ ذَلِكَ مِنَ الْأَخَوَاتِ فُرِضَ لَهُنَّ الثُّلُثَانِ. فَإِنْ كَانَ مَعَهُنَّ أَخٌ ذَكَرٌ فَإِنَّهُ لَا فَرِيضَةَ لِأَحَدٍ مِنَ الْأَخَوَاتِ، وَيُبْدَأُ بِمَنْ شَرَكَهُنَّ مِنْ أَهْلِ الْفَرَائِضِ فَيُعْطَوْنَ فَرَائِضَهُمْ، فَمَا فَضَلَ بَعْدَ ذَلِكَ كَانَ بَيْنَ الْإِخْوَةِ لِلْأُمِّ وَالْأَبِ، لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ، إِلَّا فِي فَرِيضَةٍ وَاحِدَةٍ فَقَطْ لَمْ يَفْضُلْ لَهُمْ مِنْهَا شَيْءٌ فَأُشْرِكُوا مَعَ بَنِي أُمِّهِمْ (343).

13. فَإِنْ كَانَتَا اثْنَتَيْنِ فَمَا فَوْقَ ذَلِكَ مِنَ الأَخَوَاتِ لِلأَبِ وَالأُمِّ فُرِضَ لَهُنَّ الثُّلُثَانِ. فَإِنْ كَانَ مَعَهُنَّ أَخٌ ذَكَرٌ فَلاَ فَرِيضَةَ لأَحَدٍ مِنَ الأَخَوَاتِ، وَاحِدَةً كَانَتْ أَوْ أَكْثَرَ مِنْ ذَلِكَ، وَيُبْدَأُ بِمَنْ شَرِكَهُمْ بِفَرِيضَةٍ مُسَمَّاةٍ، فَيُعْطَوْنَ فَرَائِضَهُمْ، فَمَا فَضَلَ بَعْدَ ذَلِكَ مِنْ شَيْءٍ كَانَ بَيْنَ الإِخْوَةِ لِلأَبِ وَالأُمِّ، لِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ، إِلاَّ فِي فَرِيضَةٍ وَاحِدَةٍ فَقَطْ، لَمْ يَكُنْ لَهُمْ فِيهَا شَيْءٌ فَاشْتَرَكُوا فِيهَا مَعَ بَنِي الأُمِّ فِي ثُلُثِهِمْ (2: 508).

14. وَهِيَ امْرَأَةٌ تُوُفِّيَتْ فَتَرَكَتْ زَوْجَهَا، وَأُمَّهَا، وَإِخْوَتَهَا لِأُمِّهَا، وَإِخْوَتَهَا لِأَبِيهَا وَأُمِّهَا، فَكَانَ لِزَوْجِهَا النِّصْفُ، وَلِأُمِّهَا السُّدُسُ، وَلِبَنِي أُمِّهَا الثُّلُثُ، فَلَمْ يَفْضُلْ، فَيُشْرَكُ بَنُو الْأُمِّ وَالْأَبِ فِي هَذِهِ الْفَرِيضَةِ مَعَ بَنِي الْأُمِّ فِي ثُلُثِهِمْ، فَيَكُونُ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ؛ مِنْ أَجْلِ أَنَّهُمْ كَانُوا كُلُّهُمْ بَنِي أُمِّ الْمُتَوَفَّى (343).

14. وَتِلْكَ الْفَرِيضَةُ: امْرَأَةٌ تُوُفِّيَتْ وَتَرَكَتْ زَوْجَهَا، وَأُمَّهَا، وَإِخْوَتَهَا لأُمِّهَا، وَإِخْوَتَهَا لأُمِّهَا وَأَبِيهَا، فَكَانَ لِزَوْجِهَا النِّصْفُ، وَلأُمِّهَا السُّدُسُ، وَلإِخْوَتِهَا لأُمِّهَا الثُّلُثُ، فَلَمْ يَفْضُلْ شَيْءٌ بَعْدَ ذَلِكَ، فَيَشْتَرِكُ بَنُو الأَبِ وَالأُمِّ فِي هَذِهِ الْفَرِيضَةِ مَعَ بَنِي الأُمِّ فِي ثُلُثِهِمْ، فَيَكُونُ لِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَى، مِنْ أَجْلِ أَنَّهُمْ كُلَّهُمْ إِخْوَةُ الْمُتَوَفَّى

	لأُمِّهِ (2: 508–509).
15. وَمِيرَاثُ الْإِخْوَةِ لِلْأَبِ: إِذَا لَمْ يَكُنْ مَعَهُمْ أَحَدٌ مِنْ بَنِي الْأُمِّ وَالْأَبِ كَمِيرَاثِ الْإِخْوَةِ لِلْأُمِّ وَالْأَبِ سَوَاءً، ذُكُورُهُمْ كَذَكَرِهِمْ، وَإِنَاثُهُمْ كَإِنَاثِهِمْ، إِلَّا أَنَّهُمْ لَا يُشْرِكُونَ مَعَ بَنِي الْأُمِّ فِي هَذِهِ الْفَرِيضَةِ الَّتِي شَرَكَهُمْ فِيهَا بَنُو الْأُمِّ وَالْأَبِ (343).	15. أَنَّ مِيرَاثَ الإِخْوَةِ لِلأَبِ: إِذَا لَمْ يَكُنْ مَعَهُمْ أَحَدٌ مِنْ بَنِي الأَبِ وَالأُمِّ كَمَنْزِلَةِ الإِخْوَةِ لِلأَبِ وَالأُمِّ سَوَاءً، ذُكُورُهُمْ كَذَكَرِهِمْ، وَأُنْثَاهُمْ كَأُنْثَاهُمْ، إِلاَّ أَنَّهُمْ لاَ يُشَرِّكُونَ مَعَ بَنِي الأُمِّ فِي الْفَرِيضَةِ الَّتِي شَرَكَهُمْ فِيهَا بَنُو الأَبِ وَالأُمِّ (2: 509).
16. فَإِذَا اجْتَمَعَ الْإِخْوَةُ مِنَ الْأُمِّ وَالْأَبِ، وَالْإِخْوَةُ مِنَ الْأَبِ، [وَكَانَ فِي بَنِي الْأَبِ وَالْأُمِّ ذَكَرٌ]، فَلَا مِيرَاثَ مَعَهُ لِأَحَدٍ مِنَ الْإِخْوَةِ مِنَ الْأَبِ. فَإِنْ لَمْ يَكُنْ بَنُو الْأُمِّ وَالْأَبِ إِلَّا امْرَأَةً وَاحِدَةً، وَكَانَ بَنُو الْأَبِ امْرَأَةً وَاحِدَةً أَوْ أَكْثَرَ مِنْ ذَلِكَ مِنَ الْإِنَاثِ لَا ذَكَرَ فِيهِنَّ، فَإِنَّهُ يُفْرَضُ لِلْأُخْتِ مِنَ الْأُمِّ وَالْأَبِ النِّصْفُ، وَيُفْرَضُ لِلْأَخَوَاتِ مِنَ الْأَبِ السُّدُسُ تَتِمَّةَ الثُّلُثَيْنِ (344).	16. فَإِنِ اجْتَمَعَ الإِخْوَةُ مِنَ الأُمِّ وَالأَبِ، وَالإِخْوَةُ لِلأَبِ، فَكَانَ فِي بَنِي الأَبِ وَالأُمِّ ذَكَرٌ، فلاَ مِيرَاثَ لأَحَدٍ مِنْ بَنِي الأَبِ. وَإِنْ لَمْ يَكُنْ بَنُو الأَبِ وَالأُمِّ إِلاَّ امْرَأَةً وَاحِدَةً، أَوْ أَكْثَرَ مِنْ ذَلِكَ مِنَ الإِنَاثِ لاَ ذَكَرَ مَعَهُنَّ، فَإِنَّهُ يُفْرَضُ لِلأُخْتِ الْوَاحِدَةِ لِلأَبِ وَالأُمِّ النِّصْفُ، وَيُفْرَضُ لِلأَخَوَاتِ لِلأَبِ السُّدُسُ تَتِمَّةَ الثُّلُثَيْنِ (2: 509).
17. فَإِنْ كَانَ مَعَ بَنَاتِ الْأَبِ ذَكَرٌ فَلَا فَرِيضَةَ لَهُنَّ، وَيُبْدَأُ بِأَهْلِ الْفَرَائِضِ، فَيُعْطَوْنَ فَرَائِضَهُمْ، فَإِنْ فَضَلَ بَعْدَ ذَلِكَ فَضْلٌ كَانَ بَيْنَ بَنِي الْأَبِ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ، وَإِنْ لَمْ يَفْضُلْ لَهُمْ شَيْءٌ فَلَا شَيْءَ لَهُمْ (344).	17. فَإِنْ كَانَ مَعَ الأَخَوَاتِ لِلأَبِ ذَكَرٌ فَلاَ فَرِيضَةَ لَهُنَّ، وَيُبْدَأُ بِأَهْلِ الْفَرَائِضِ الْمُسَمَّاةِ، فَيُعْطَوْنَ فَرَائِضَهُمْ، فَإِنْ فَضَلَ بَعْدَ ذَلِكَ فَضْلٌ كَانَ بَيْنَ الإِخْوَةِ لِلأَبِ لِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ، وَإِنْ لَمْ يَفْضُلْ شَيْءٌ فَلاَ شَيْءَ لَهُمْ (2: 509–510).
18. وإِنْ كَانَ بَنُو الْأُمِّ وَالْأَبِ امْرَأَتَيْنِ، فَأَكْثَرَ مِنْ ذَلِكَ مِنَ الْإِنَاثِ فُرِضَ لَهُنَّ الثُّلُثَانِ، وَلَا مِيرَاثَ مَعَهُنَّ لِبَنَاتِ الْأَبِ، إِلَّا أَنْ يَكُونَ مَعَهُنَّ ذَكَرٌ مِنْ أَبٍ، فَإِنْ كَانَ مَعَهُنَّ ذَكَرٌ بُدِئَ بِفَرَائِضِ مَنْ كَانَتْ لَهُ فَرِيضَةٌ فَأُعْطَوْهَا، فَإِنْ فَضَلَ بَعْدَ ذَلِكَ فَضْلٌ كَانَ بَيْنَ بَنِي الْأَبِ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ، وَإِنْ لَمْ يَفْضُلْ لَهُمْ شَيْءٌ فَلَا شَيْءَ لَهُمْ (344).	18. فَإِنْ كَانَ الإخوةُ لِلأَبِ وَالأُمِّ امْرَأَتَيْنِ، أَوْ أَكْثَرَ مِنْ ذَلِكَ مِنَ الإِنَاثِ فُرِضَ لَهُنَّ الثُّلُثَانِ، وَلاَ مِيرَاثَ مَعَهُنَّ لِلأَخَوَاتِ لِلأَبِ، إِلاَّ أَنْ يَكُونَ مَعَهُنَّ أَخٌ لأَبٍ، فَإِنْ كَانَ مَعَهُنَّ أَخٌ لأَبٍ بُدِئَ بِمَنْ شَرَّكَهُمْ بِفَرِيضَةٍ مُسَمَّاةٍ، فَأُعْطُوا فَرَائِضَهُمْ، فَإِنْ فَضَلَ بَعْدَ ذَلِكَ فَضْلٌ كَانَ بَيْنَ الإِخْوَةِ لِلأَبِ لِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ، وَإِنْ لَمْ يَفْضُلْ شَيْءٌ فَلاَ شَيْءَ لَهُمْ (2: 510).
19. وَمِيرَاثُ الْجَدِّ أَبِي الْأَبِ: أَنَّهُ لَا يَرِثُ مَعَ الْأَبِ دِنْيًا شَيْئًا، وَهُوَ مَعَ الْوَلَدِ الذَّكَرِ، وَمَعَ ابْنِ الِابْنِ يُفْرَضُ لَهُ السُّدُسُ، وَهُوَ فِيمَا سِوَى ذَلِكَ مَا لَمْ يَتْرُكِ الْمُتَوَفَّ أَخًا أَوْ أُخْتًا مِنْ أَبِيهِ (344–345).	19. أَنَّ الْجَدَّ أَبَا الأَبِ، لاَ يَرِثُ مَعَ الأَبِ دِنْيَا شَيْئًا، وَهُوَ يُفْرَضُ لَهُ مَعَ الْوَلَدِ الذَّكَرِ، وَمَعَ ابْنِ الابْنِ الذَّكَرِ السُّدُسُ فَرِيضَةً، وَهُوَ فِيمَا سِوَى ذَلِكَ مَا لَمْ يَتْرُكِ الْمُتَوَفَّ أُخًا أَوْ أُخْتًا لأَبِيهِ (2: 511).
20. وَيُبْدَأُ بِأَحَدٍ إِنْ شَرَكَهُ مِنْ أَهْلِ الْفَرَائِضِ، فَيُعْطَى فَرِيضَتَهُ، فَإِنْ فَضَلَ مِنَ الْمَالِ السُّدُسُ فَأَكْثَرُ مِنْهُ كَانَ لِلْجَدِّ، وَإِنْ لَمْ يَفْضُلِ السُّدُسُ فَأَكْثَرُ مِنْهُ فُرِضَ لِلْجَدِّ السُّدُسُ فَرِيضَةً (345).	20. يُبدأُ بِأَحَدٍ إِنْ شَرَكَهُ مِنْ أَهْلِ الْفَرَائِضِ، فَيُعْطَى فَرِيضَتَهُ، فَإِنْ فَضَلَ مِنَ الْمَالِ السُّدُسُ فَمَا فَوْقَهُ كَانَ لَهُ، وَإِنْ لَمْ يَفْضُلْ مِنَ الْمَالِ السُّدُسُ فَمَا فَوْقَهُ فُرِضَ لِلْجَدِّ السُّدُسُ فَرِيضَةً (2: 511).
21. وَمِيرَاثُ الْجَدِّ أَبِي الْأَبِ مَعَ الْإِخْوَةِ مِنَ الْأُمِّ وَالْأَبِ: أَنَّهُمْ يُخَلَّفُونَ، وَيُبْدَأُ بِأَحَدٍ إِنْ شَرَكَهُمْ مِنْ أَهْلِ الْفَرَائِضِ، فَيُعْطَوْنَ	21. وَالْجَدُّ، وَالإِخْوَةُ لِلأَبِ وَالأُمِّ: إِذَا شَرَّكَهُمْ أَحَدٌ بِفَرِيضَةٍ مُسَمَّاةٍ، يُبدأُ بِمَنْ شَرَكَهُمْ مِنْ أَهْلِ الْفَرَائِضِ، فَيُعْطَوْنَ فَرَائِضَهُمْ، فَمَا بَقِيَ بَعْدَ

فَرَائِضَهُمْ، فَمَا بَقِيَ لِلْجَدِّ وَالْإِخْوَةِ مِنْ شَيْءٍ، فَإِنَّهُ يُنْظَرُ فِي ذَلِكَ وَيُحْسَبُ أَيُّهُ أَفْضَلُ لِحَظِّ الْجَدِّ: الثُّلُثُ مِمَّا يَحْصُلُ لَهُ وَالْإِخْوَةُ، أَمْ أَنْ يَكُونَ أَخًا يُقَاسِمُ الْإِخْوَةَ فِيمَا يَحْصُلُ لَهُمْ وَلَهُ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ، أَمِ السُّدُسُ مِنْ رَأْسِ الْمَالِ كُلِّهِ فَارِغًا، فَأَيُّ ذَلِكَ كَانَ أَفْضَلَ لِحَظِّ الْجَدِّ أُعْطِيَهُ الْجَدُّ، وَمَا بَقِيَ بَعْدَ ذَلِكَ بَيْنَ الْإِخْوَةِ لِلْأَبِ وَالْأُمِّ (345).	ذَلِكَ لِلْجَدِّ وَالإِخْوَةِ مِنْ شَيْءٍ، فَإِنَّهُ يُنْظَرُ أَيُّ ذَلِكَ أَفْضَلُ لِحَظِّ الْجَدِّ: أُعْطِيَهُ الثُّلُثَ مِمَّا بَقِيَ لَهُ وَلِلإِخْوَةِ، أَوْ يَكُونُ بِمَنْزِلَةِ رَجُلٍ مِنَ الإِخْوَةِ فِيمَا يَحْصُلُ لَهُ وَلَهُمْ، يُقَاسِمُهُمْ بِمِثْلِ حِصَّةِ أَحَدِهِمْ، أَوِ السُّدُسُ مِنْ رَأْسِ الْمَالِ كُلِّهِ، أَيُّ ذَلِكَ كَانَ أَفْضَلَ لِحَظِّ الْجَدِّ أُعْطِيَهُ الْجَدُّ، وَكَانَ مَا بَقِيَ بَعْدَ ذَلِكَ لِلإِخْوَةِ لِلأَبِ وَالأُمِّ (2: 511).
22. إِلَّا فِي فَرِيضَةٍ وَاحِدَةٍ تَكُونُ قِسْمَتُهُمْ فِيهَا عَلَى غَيْرِ ذَلِكَ. [الْأَكْدَرِيَّةُ]: وَهِيَ امْرَأَةٌ تُوُفِّيَتْ، وَتَرَكَتْ زَوْجَهَا، وَأُمَّهَا، وَجَدَّهَا، وَأُخْتَهَا لِأَبِيهَا، فَيُفْرَضُ لِلزَّوْجِ النِّصْفُ، وَلِلْأُمِّ الثُّلُثُ، وَلِلْجَدِّ السُّدُسُ، وَلِلْأُخْتِ النِّصْفُ، ثُمَّ يُجْمَعُ سُدُسُ الْجَدِّ، وَنِصْفُ الْأُخْتِ، فَيُقْسَمُ كُلُّهُ أَثْلَاثًا، لِلْجَدِّ مِنْهُ الثُّلُثَانِ، وَلِلْأُخْتِ الثُّلُثُ (345).	22. إِلاَّ فِي فَرِيضَةٍ وَاحِدَةٍ تَكُونُ قِسْمَتُهُمْ فِيهَا عَلَى غَيْرِ ذَلِكَ. وَتِلْكَ الْفَرِيضَةُ: امْرَأَةٌ تُوُفِّيَتْ، وَتَرَكَتْ زَوْجَهَا، وَأُمَّهَا، وَأُخْتَهَا لأُمِّهَا وَأَبِيهَا، وَجَدَّهَا، فَلِلزَّوْجِ النِّصْفُ، وَلِلأُمِّ الثُّلُثُ، وَلِلْجَدِّ السُّدُسُ، وَلِلأُخْتِ لِلأُمِّ وَالأَبِ النِّصْفُ، ثُمَّ يُجْمَعُ سُدُسُ الْجَدِّ، وَنِصْفُ الأُخْتِ، فَيُقْسَمُ أَثْلاَثًا، لِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ، فَيَكُونُ لِلْجَدِّ ثُلُثَاهُ، وَلِلأُخْتِ ثُلُثُهُ (2: 511–512).
23. وَمِيرَاثُ الإِخْوَةِ مِنَ الأَبِ [مَعَ الْجَدِّ]: إِذَا لَمْ يَكُنْ مَعَهُمْ إِخْوَةٌ لِلأُمِّ وَالأَبِ كَمِيرَاثِ الإِخْوَةِ مِنَ الأُمِّ وَالأَبِ سَوَاءً، ذَكَرُهُمْ كَذَكَرِهِمْ، وَأُنْثَاهُمْ كَأُنْثَاهُمْ (345). 24. فَإِذَا اجْتَمَعَ الإِخْوَةُ مِنَ الأُمِّ وَالأَبِ، وَالإِخْوَةُ مِنَ الأَبِ، فَإِنَّ بَنِي الأُمِّ وَالأَبِ يُعَادُّونَ الْجَدَّ بِبَنِي أَبِيهِمْ، فَيَمْنَعُونَهُ بِهِمْ كَثْرَةَ الْمِيرَاثِ، فَمَا حَصَلَ لِلإِخْوَةِ بَعْدَ حَظِّ الْجَدِّ مِنْ شَيْءٍ فَإِنَّهُ يَكُونُ لِبَنِي الأُمِّ وَالأَبِ (345). 25. وَلاَ يَكُونُ لِبَنِي الأَبِ، إِلاَّ أَنْ يَكُونَ بَنُو الأُمِّ وَالأَبِ إِنَّمَا هِيَ امْرَأَةٌ وَاحِدَةٌ، فَإِنْ كَانَتِ امْرَأَةً وَاحِدَةً فَإِنَّهَا تُعَادُّ الْجَدَّ بِبَنِي أَبِيهَا مَا كَانُوا، فَمَا حَصَلَ لَهَا وَلَهُمْ مِنْ شَيْءٍ كَانَ لَهَا دُونَهُمْ مَا بَيْنَهَا وَبَيْنَ أَنْ تَسْتَكْمِلَ نِصْفَ الْمَالِ، فَإِنْ كَانَ فِيمَا يُحَازُ لَهَا وَلَهُمْ فَضْلٌ عَلَى نِصْفِ الْمَالِ كُلِّهِ فَإِنَّ ذَلِكَ الْفَضْلَ يَكُونُ بَيْنَ بَنِي الأَبِ، لِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ، وَإِنْ لَمْ يَفْضُلْ شَيْءٌ فَلاَ شَيْءَ لَهُمْ (345–346).	23. وَمِيرَاثُ الإِخْوَةِ لِلأَبِ مَعَ الْجَدِّ: إِذَا لَمْ يَكُنْ مَعَهُمْ إِخْوَةٌ لأَبٍ وَأُمٍّ، كَمِيرَاثِ الإِخْوَةِ لِلأَبِ وَالأُمِّ سَوَاءً، ذَكَرُهُمْ كَذَكَرِهِمْ، وَأُنْثَاهُمْ كَأُنْثَاهُمْ (2: 512). 24. فَإِذَا اجْتَمَعَ الإِخْوَةُ لِلأَبِ وَالأُمِّ، وَالإِخْوَةُ لِلأَبِ، فَإِنَّ الإِخْوَةَ لِلأَبِ وَالأُمِّ يُعَادُّونَ الْجَدَّ بِإِخْوَتِهِمْ لأَبِيهِمْ، فَيَمْنَعُونَهُ بِهِمْ كَثْرَةَ الْمِيرَاثِ بِعَدَدِهِمْ... فَمَا حَصَلَ لِلإِخْوَةِ مِنْ بَعْدِ حَظِّ الْجَدِّ، فَإِنَّهُ يَكُونُ لِلإِخْوَةِ مِنَ الأَبِ وَالأُمِّ، دُونَ الإِخْوَةِ لِلأَبِ (2: 512). 25. وَلاَ يَكُونُ لِلإِخْوَةِ لِلأَبِ مَعَهُمْ شَيْءٌ، إِلاَّ أَنْ يَكُونَ الإِخْوَةُ لِلأَبِ وَالأُمِّ امْرَأَةً وَاحِدَةً، فَإِنْ كَانَتِ امْرَأَةً وَاحِدَةً فَإِنَّهَا تُعَادُّ الْجَدَّ بِإِخْوَتِهَا لأَبِيهَا مَا كَانُوا، فَمَا حَصَلَ لَهُمْ وَلَهَا مِنْ شَيْءٍ كَانَ لَهَا دُونَهُمْ مَا بَيْنَهَا وَبَيْنَ أَنْ تَسْتَكْمِلَ فَرِيضَتَهَا، وَفَرِيضَتُهَا النِّصْفُ مِنْ رَأْسِ الْمَالِ كُلِّهِ، فَإِنْ كَانَ فِيمَا يُحَازُ لَهَا وَلِإِخْوَتِهَا لأَبِيهَا فَضْلٌ عَن نِصْفِ رَأْسِ الْمَالِ كُلِّهِ، فَهُوَ لإِخْوَتِهَا لأَبِيهَا، لِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ، فَإِنْ لَمْ يَفْضُلْ شَيْءٌ، فَلاَ شَيْءَ لَهُمْ (2: 512).
26. وَمِيرَاثُ الْجَدَّاتِ: أَنَّ أُمَّ الأُمِّ لاَ تَرِثُ مَعَ الأُمِّ شَيْئًا، وَهِيَ فِيمَا سِوَى ذَلِكَ يُفْرَضُ لَهَا السُّدُسُ فَرِيضَةً. وَإِنَّ أُمَّ الأَبِ لاَ تَرِثُ مَعَ الأُمِّ شَيْئًا، لاَ مَعَ الأَبِ، وَهِيَ فِيمَا سِوَى ذَلِكَ يُفْرَضُ لَهَا السُّدُسُ	26. أَنَّ الْجَدَّةَ أُمَّ الأُمِّ لاَ تَرِثُ مَعَ الأُمِّ دِنْيًا شَيْئًا، وَهِيَ فِيمَا سِوَى ذَلِكَ يُفْرَضُ لَهَا السُّدُسُ فَرِيضَةً، وَأَنَّ الْجَدَّةَ أُمَّ الأَبِ لاَ تَرِثُ مَعَ الأُمِّ، وَلاَ مَعَ الأَبِ شَيْئًا، وَهِيَ فِيمَا سِوَى ذَلِكَ يُفْرَضُ لَهَا السُّدُسُ

فَرِيضَةً (346). 27. وَقَالَ أَبُو الزِّنَادِ : فَإِذَا اجْتَمَعَتِ الْجَدَّتَانِ لَيْسَ لِلْمُتَوَفَّى دُونَهَما أَبٌ وَلاَ أُمٌّ. فَإِنَّا قَدْ سَمِعْنَا أَنَّهَا إِنْ كَانَتِ الَّتِي مِنْ قِبَلِ الأُمِّ هِيَ أَقْعَدَهُمَا كَانَ لَهَا السُّدُسُ مِنْ دُونِ الَّتِي مِنْ قِبَلِ الأَبِ، وَإِنْ كَانَتَا مِنَ الْمُتَوَفَّى بِمَنْزِلَةٍ وَاحِدَةٍ، أَوْ كَانَتِ الَّتِي مِنْ قِبَلِ الأَبِ هِيَ أَقْعَدَهُمَا كَانَ السُّدُسُ بَيْنَهُمَا نِصْفَيْنِ (346).	فَرِيضَةً (2: 514). 27. فَإِذَا اجْتَمَعَتِ الْجَدَّتَانِ أُمُّ الأَبِ، وَأُمُّ الأُمِّ، وَلَيْسَ لِلْمُتَوَفَّى دُونَهُمَا أَبٌ وَلاَ أُمٌّ. قَالَ مَالِكٌ: فَإِنِّي سَمِعْتُ أَنَّ أُمَّ الأُمِّ إِنْ كَانَتْ أَقْعَدَهُمَا، كَانَ لَهَا السُّدُسُ دُونَ أُمِّ الأَبِ، وَإِنْ كَانَتْ أُمُّ الأَبِ أَقْعَدَهُمَا، أَوْ كَانَتَا فِي الْقُعْدَدِ مِنَ الْمُتَوَفَّى بِمَنْزِلَةٍ سَوَاءٍ، فَإِنَّ السُّدُسَ بَيْنَهُمَا نِصْفَانِ (2: 514).
28. كِتَابُ وِلاَيَةِ الْعَصَبَةِ: الأَخُ لِلأُمِّ وَالأَبِ أَوْلَى بِالْمِيرَاثِ مِنَ الأَخِ لِلأَبِ. وَالأَخُ لِلأَبِ أَوْلَى مِنَ ابْنِ الأَخِ مِنَ الأُمِّ وَالأَبِ. وَابْنُ الأَخِ لِلأُمِّ وَالأَبِ أَوْلَى مِنَ ابْنِ الأَخِ لِلأَبِ. وَابْنُ الأَخِ لِلأَبِ أَوْلَى مِنَ ابْنِ ابنِ الأَخِ لِلأُمِّ وَالأَبِ. وَابْنُ الأَخِ لِلأَبِ أَوْلَى مِنَ الْعَمِّ أَخِي الأَبِ لِلأُمِّ وَالأَبِ. وَالْعَمُّ أَخُو الأَبِ لِلأُمِّ وَالأَبِ أَوْلَى مِنَ الْعَمِّ أَخِي الأَبِ لِلأَبِ. وَالْعَمُّ أَخُو الأَبِ أَوْلَى مِنَ ابْنِ الْعَمِّ أَخِي الأَبِ لِلأُمِّ وَالأَبِ. وَابْنُ الْعَمِّ لِلأَبِ أَوْلَى مِنْ عَمِّ الأَبِ أَخِي أَبِي الأَبِ لِلأُمِّ وَالأَبِ (346-347).	28. فِي وِلاَيَةِ الْعَصَبَةِ: أَنَّ الأَخَ لِلأَبِ وَالأُمِّ، أَوْلَى بِالْمِيرَاثِ مِنَ الأَخِ لِلأَبِ. وَالأَخُ لِلأَبِ أَوْلَى بِالْمِيرَاثِ مِنْ بَنِي الأَخِ لِلأَبِ وَالأُمِّ. وَبَنُو الأَخِ لِلأَبِ وَالأُمِّ أَوْلَى مِنْ بَنِي الأَخِ لِلأَبِ. وَبَنُو الأَخِ لِلأَبِ أَوْلَى مِنْ بَنِي ابْنِ الأَخِ لِلأَبِ وَالأُمِّ. وَبَنُو ابْنِ الأَخِ لِلأَبِ أَوْلَى مِنَ الْعَمِّ أَخِي الأَبِ لِلأَبِ وَالأُمِّ. وَالْعَمُّ أَخُو الأَبِ لِلأَبِ وَالأُمِّ، أَوْلَى مِنَ الْعَمِّ أَخِي الأَبِ لِلأَبِ. وَالْعَمُّ أَخُو الأَبِ لِلأَبِ، أَوْلَى مِنْ بَنِي الْعَمِّ أَخِي الأَبِ لِلأَبِ وَالأُمِّ. وَابْنُ الْعَمِّ لِلأَبِ أَوْلَى مِنْ عَمِّ الأَبِ أَخِي أَبِي الأَبِ لِلأَبِ وَالأُمِّ (2: 517).
29. وَكُلُّ مَا سُئِلْتَ عَنْهُ مِنْ مِيرَاثِ الْعَصَبَةِ فَإِنَّهَا عَلَى نَحْوِ هَذَا مَا سُئِلْتَ عَنْهُ مِنْ ذَلِكَ: فَانْسِبِ الْمُتَوَفَّى وَانْسِبْ مَنْ يُنَازِعُ فِي الْوَلاَيَةِ مِنْ عَصَبَتِهِ، فَإِنْ وَجَدْتَ مِنْهُمْ أَحَدًا يَلْقَى الْمُتَوَفَّى إِلَى أَبٍ لاَ يَلْقَاهُ مَنْ سِوَاهُ مِنْهُمْ إِلاَّ إِلَى أَبٍ فَوْقَ ذَلِكَ، فَاجْعَلِ الْمِيرَاثَ لِلَّذِي يَلْقَاهُ إِلَى الأَبِ الأَدْنَى دُونَ الآخَرِينَ (347). 30. وَإِذَا وَجَدْتَهُمْ يَلْقَوْنَهُ كُلَّهُمْ إِلَى أَبٍ وَاحِدٍ يَجْمَعُهُمْ جَمِيعًا، فَانْظُرْ أَقْعَدَهُمْ فِي النَّسَبِ، فَإِنْ كَانَ ابْنَ أَبٍ فَقَطْ فَاجْعَلِ الْمِيرَاثَ لَهُ دُونَ الأَطْرَافِ (347). 31. وَإِنْ كَانَ الأَطْرَافُ مِنْ أُمٍّ وَأَبٍ، فَإِنْ وَجَدْتَهُمْ مُسْتَوِينَ يَنْتَسِبُونَ مِنْ عَدَدِ الآبَاءِ إِلَى عَدَدٍ وَاحِدٍ، حَتَّى يَلْقَوْا نَسَبَ الْمُتَوَفَّى، وَكَانُوا كُلُّهُمْ بَنِينَ بَنِي أَبٍ، أَوْ بَنِي أَبٍ وَأُمٍّ فَاجْعَلِ الْمِيرَاثَ بَيْنَهُمْ بِالسَّوَاءِ (347). 32. وَإِنْ كَانَ وَالِدُ بَعْضِهِمْ أَخَا وَالِدِ ذَلِكَ الْمُتَوَفَّى لأُمِّهِ وَأَبِيهِ، وَكَانَ	29. قَالَ مَالِكٌ: وَكُلُّ شَيْءٍ سُئِلْتَ عَنْهُ مِنْ مِيرَاثِ الْعَصَبَةِ فَإِنَّهُ عَلَى نَحْوِ هَذَا: انْسِبِ الْمُتَوَفَّى وَمَنْ يُنَازِعُ فِي وِلاَيَتِهِ مِنْ عَصَبَتِهِ، فَإِنْ وَجَدْتَ أَحَدًا مِنْهُمْ يَلْقَى الْمُتَوَفَّى إِلَى أَبٍ لاَ يَلْقَاهُ أَحَدٌ مِنْهُمْ إِلَى أَبٍ دُونَهُ، فَاجْعَلْ مِيرَاثَهُ لِلَّذِي يَلْقَاهُ إِلَى الأَبِ الأَدْنَى دُونَ مَنْ يَلْقَاهُ إِلَى فَوْقِ ذَلِكَ (2: 517). 30. فَإِنْ وَجَدْتَهُمْ كُلَّهُمْ يَلْقَوْنَهُ إِلَى أَبٍ وَاحِدٍ يَجْمَعُهُمْ جَمِيعًا، فَانْظُرْ أَقْعَدَهُمْ فِي النَّسَبِ، فَإِنْ كَانَ ابْنَ أَبٍ فَقَطْ فَاجْعَلِ الْمِيرَاثَ لَهُ دُونَ الأَطْرَافِ (2: 517). 31. وَإِنْ كَانَ ابْنَ أَبٍ وَأُمٍّ، فَإِنْ وَجَدْتَهُمْ مُسْتَوِينَ يَنْتَسِبُونَ مِنْ عَدَدِ الآبَاءِ إِلَى عَدَدٍ وَاحِدٍ، حَتَّى يَلْقَوْا نَسَبَ الْمُتَوَفَّى جَمِيعًا، وَكَانُوا كُلُّهُمْ جَمِيعًا بَنِي أَبٍ، أَوْ بَنِي أَبٍ وَأُمٍّ فَاجْعَلِ الْمِيرَاثَ بَيْنَهُمْ سَوَاءً (2: 517-518). 32. وَإِنْ كَانَ وَالِدُ بَعْضِهِمْ أَخَا وَالِدِ الْمُتَوَفَّى لِلأَبِ وَالأُمِّ، وَكَانَ مَنْ

وَالِدُ مَنْ سِوَاهُ إِنَّمَا هُوَ أَخُو وَالِدِ ذَلِكَ الْمُتَوَفَّى لأَبِيهِ فَقَطْ، فَإِنَّ الْمِيرَاثَ لِبَنِي الأَبِ وَالأُمِّ (348). 33. وَالْجَدُّ أَبُو الأَبِ أَوْلَى مِنَ ابْنِ الأَخِ لِلأَبِ وَالأُمِّ، وَأَوْلَى مِنَ الْعَمِّ أَخِي الأَبِ لِلأُمِّ وَالأَبِ (348).	سِوَاهُ مِنْهُمْ إِنَّمَا هُوَ أَخُو أَبِي الْمُتَوَفَّى لأَبِيهِ فَقَطْ، فَإِنَّ الْمِيرَاثَ لِبَنِي أَخِي الْمُتَوَفَّى لأَبِيهِ وَأُمِّهِ، دُونَ بَنِي الأَخِ لِلأَبِ (2: 518). 33. وَالْجَدُّ أَبُو الأَبِ أَوْلَى، مِنْ بَنِي الأَخِ لِلأَبِ وَالأُمِّ، وَأَوْلَى مِنَ الْعَمِّ أَخِي الأَبِ لِلأَبِ والأم بالميراث (2: 518).
34. وَلاَ يَرِثُ ابْنُ الأَخِ لِلأُمِّ بِرَحِمِهِ تِلْكَ شَيْئًا، وَلاَ الْجَدُّ أَبُو الأُمِّ بِرَحِمِهِ تِلْكَ شَيْئًا، وَلاَ الْعَمُّ أَخُو الأَبِ لِلأُمِّ بِرَحِمِهِ تِلْكَ شَيْئًا، وَلاَ الْخَالُ بِرَحِمِهِ تِلْكَ شَيْئًا، وَلاَ تَرِثُ الْجَدَّةُ أُمُّ أَبِي الأُمِّ، وَلاَ ابْنَةُ الأَخِ لِلأُمِّ وَالأَبِ، وَلاَ الْعَمَّةُ أُخْتُ الأَبِ لِلأُمِّ وَالأَبِ، وَلاَ الْخَالَةُ (348). 35. وَلاَ مَنْ هُوَ أَبْعَدُ نَسَبًا مِنَ الْمُتَوَفَّى مِمَّنْ سُمِّيَ فِي هَذَا الْكِتَابِ، لاَ يَرِثُ أَحَدٌ مِنْهُمْ بِرَحِمِهِ تِلْكَ شَيْئًا (348).	34. أَنَّ ابْنَ الأَخِ لِلأُمِّ، بِرَحِمِهِ تِلْكَ شَيْئًا، وَلاَ الْجَدَّ أَبَا الأُمِّ، وَلاَ الْعَمَّ أَخَا الأَبِ لِلأُمِّ، وَالْخَالَ، وَالْجَدَّةَ أُمَّ أَبِي الأُمِّ، وَابْنَةَ الأَخِ لِلأَبِ وَالأُمِّ، وَالْعَمَّةَ، وَالْخَالَةَ، لاَ يَرِثُونَ بِأَرْحَامِهِمْ شَيْئًا (2: 518). 35. قَالَ: وَإِنَّهُ لاَ تَرِثُ امْرَأَةٌ، هِيَ أَبْعَدُ نَسَبًا مِنَ الْمُتَوَفَّى مِمَّنْ سُمِّيَ فِي هَذَا الْكِتَابِ بِرَحِمِهَا شَيْئًا (2: 518).

This table reveals that one of the important sources of *al-Muwaṭṭa'* is *Risālat al-Farā'iḍ* due to similarities between them. Therefore, in the light of the similarities, we can make the following evaluations: One of the first documents of Islamic law (perhaps the first Islamic legal text) that survived is the work titled *Risālat al-Farā'iḍ* written or interpreted by Abū al-Zinād. Evidently, it is possible to obtain significant information on the early Islamic law in the first-century and the first half of the second-century through this work. Although it belongs to Abū al-Zinād, it is stated at the entrance of *al-Risalāh* that "All the meanings and principles (uṣūl) of this al-farāiḍ were adapted from Zayd b. Thābit. Abū al-Zinād interpreted it according to the meanings of Zayd b. Thābit."

It is not entirely clear whether Abū al-Zinād directly commented on Zayd's *al-Faraiḍ* or wrote this work independently in the direction of Zayd's views. However, it is interesting to note that many of the paragraphs found in *al-Faraiḍ* are handled -with almost the same words- under the term "al-amr al-mujtama'u 'alayh 'indanā" in *al-Muwaṭṭa'*. Therefore, there might be two possibilities here. First, Abū al-Zinād handled Zayd's *al-Faraiḍ* without much contribution and Mālik took this information directly from Zayd's *al-Faraiḍ*. For that reason, the paragraphs in Abū al-Zinād's *al-Farā'iḍ* and *al-Muwaṭṭa'* are similar. Second, Abū al-Zinād wrote his *al-Farā'iḍ* based on Zayd's views and

his views constitute the source of ‘amal ahl Medīna.[33] Therefore, Malik didn’t see any trouble in transferring the knowledge, he received by Abū al-Zināḍ’s book, belonging that to the practice of Medīna.

If *al-Farā’iḍ* is taken back to Zayd, it must be accepted that Islamic law was written in the first half of the first century. Probably for that reason, Zayd's views on inheritance law are widely known. However, if it accepted this work was written in the direction of Zayd's views, then the assertion becomes as follows: The Islamic law was written by someone who lived most of his life in the first century, and the other part in the early second century.

Schacht claims that the current legal system was Islamized with the Abbasids by hadiths.[34] However, even if it is accepted that all work was written entirely by Abū al-Zināḍ (not by Zayd), the history will verify there is neither an Abbasid state nor a tradition that is Islamized through hadiths. As Abū al-Zināḍ passed away before the establishment of the Abbasid state and the information in this work is not transmitted by hadith-isnād form, on the contrary, inheritance law is expressed in normal sentences.

An investigation on *al-Muvaṭṭa*’s written sources leads us to the following statements: The comparison we had on paragraphs previously has shown that Malik benefited from the written document, namely Abū al-Zināḍ's or Zayd's *al-Risālah*. Therefore, it sheds light on the discussion on whether the books are based solely on oral information in this period. Therefore, it is understood that Mālik also benefited from the written documents he obtained from his teachers while writing *al-Muwaṭṭa’*.

Also, there is a controversial debate on the meaning of the terms used in the context of "‘amal" in *al-Muwaṭṭa’*.[35] The information found in *Risālat al-Farā’iḍ* is mentioned under different forms in *al-Muwaṭṭa’*, such as “al-amr ‘indanā”, “al-amr al-mujtama‘u ‘alayh ‘indanā”, “al-amr al-mujtama‘u ‘alayh ‘indanā, alladhī lā ikhtilāfa fīh, wa alladhī adraktu ‘alayh ahl al-‘ilm” and “al-

[33] al-Qādī ‘Iyāḍ, *Tartīb al-madārik*, 1: 169; Ibn al-Qayyim, *I‘lām al-muwaqqi‘īn ‘an Rabb al-‘ālamīn* (Saudi Arabia: Dār Ibn al-Jawzī, 1423/2003), 2/38.

[34] Schacht, *An Introduction to Islamic Law*, Oxford: Clarendon Press, 1982, 4, 19, 34, 70.

[35] See, e.g. Halit Özkan, “Amele Delâlet Eden Tabirler Açısından Muvatta Nüshaları”, *İslam Araştırmaları Dergisi*, 25 (2011), 12 etc.

amr al-mujtamaʿu ʿalayh ʿindanā, wa alladhī adraktu ʿalayh ahl al-ʿilm bi baladinā". Scholars have different opinions on whether there is a difference between these forms. Based on this study, we can say that there is no difference between them in terms of the section examined. Because the views used by these forms are equally accepted by the people of Medina.

Finally, if we come into contact with the debate on the origin of Islamic law, we can say that the information contained in the book of Abū al-Zinād is in line with Zayd's views as well as with the verses of the Qur'ān related to inheritance law. Therefore, it can be said that Powers is right in his claim that the Qur'ān -at least in inheritance law- played an important role in the formation and development of Islamic law.[36]

Conclusion

Risālat al-Farā'iḍ is the first fiqh work that has survived to the present day. It is written based on Zayd's work or written according to Zayd's views. Since there are many quotations from this work, there is no doubt about the authenticity of this book. Besides, Mālik quotes a lot of paragraphs from *al-Farā'iḍ* and mentions almost all of it in his work. Therefore, it is understood that *al-Muwaṭṭa'* is based on written documents as well as based on oral. In addition, *al-Farā'iḍ* is important in terms of showing that fiqh developed at the beginning of the second century AH with ra'y-centered because the information contained in this book is not in the form of hadith-isnād but it is expressed directly in the author's sentences. Thus, it is not possible to claim that the information of Islamic law found in this work is fabricated and Islamized later by the hadith reports.

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[36] See Powers, *Studies in Qur'ān and Hadīth: The Formation of the Islamic Law of Inheritance* (Berkeley: University of California Press, 1986).

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