

In The Name Of The Father, And Of The Son, And Of The
Holy Spirit, One God.

PART TWO

On the matters which [secular rulers] must govern, on the acts which must be specifically [allowed and] prohibited,¹ and on the [rules regarding] dwelling-place. We have already made an index of the chapters of this Part in Part One.²

CHAPTER XXIII

THE FOOD, CLOTHING, DWELLING-PLACE, AND TRADES PROPER FOR CHRISTIANS

With regard to food, there is no prohibition in the Christian law, with the exception of what the Apostles forbade in the book of the Acts and in their canons, by saying: "It is the Holy Spirit's pleasure and ours that we should lay upon you a burden heavier than that abstinence which is absolutely necessary, namely, that you abstain from eating blood, [meat] from strangled [animals], the sacrifice of idols, and [the residue of] what was eaten by animals...."³ These things are forbidden because of the spiritual ill which is in them, since by sharing with the idolators in the eating of what they sacrifice to their idols, [a Christian] becomes an associate in their cult; this leads him to the cult of idols. [These things are also forbidden] because of the corporal and spiritual ill in them, which disturbs the composition of the body and leads to the corruption of [human] nature, and to the ruin of the bodily organs.

These foods are not forbidden as things impure by their nature since they come from God's creatures, and a saying is written for us in the Law which runs: "And God saw that all he made was very good."⁴ In the Gospel also, Our Lord said: "All which goes into the mouth of a man cannot defile him."⁵ Chrysostom has said in regard to this that the Lord abolished with this word the greater part of the precepts of the [Ancient] Law. His statement is confirmed by what is said in the Acts of the Apostles, in the words of Luke, who said: "Peter went up to the housetop at about noon to pray there. He was hungry and wanted to eat. And while they were preparing the food he fell asleep; he saw the heavens open and a bundle like a great linen sheet held at four corners was descending on the earth. In it were all kinds of four-footed beasts, and all things that creep on the earth, and birds of heaven. And a voice came to him: 'Arise, Peter. kill and eat!' 'Far be it from me, Lord,' answered Peter, 'for I never did eat anything impure

1. This second part deals with civil matters and parallels the first part, which deals with religious matters. To show this, the gloss in NLM says: "It deals with the things by which the appointed authorities must rule people, and with the office of ruling."
2. See p. 10.
3. Acts 15, 28 ff. The prescription to abstain from the residue eaten by animals is not in the Acts of the Apostles. Although it has no basis in the Scriptures, however, this prescription is still observed in many parts of Ethiopia. The reason for this may be fear that the animals that ate the flesh might be diseased.
4. Gen 1, 31.
5. Mk. 7, 18.

and unclean'; and again the voice called him and said: 'That which God has cleansed, do not thou call unclean.' And this word was repeated three times."⁶ The saintly teachers, Chrysostom and other Fathers, understood from this that in it there are two meanings: The first is an allegoric sense,⁷ that from now on we must not consider people who do not believe so impure that the faithful must not associate with them, as was prescribed in the Ancient Law. The second is a literal sense,⁸ that is, we must know that all animals are pure; there is no prohibition against eating what, by natural knowledge, is good. Nourishment also is in all animals except eating blood, things strangled, things sacrificed to idols and the residue of what has been eaten by animals.

To us is allowed not to be forbidden anything except that which the law forbids as leading to the ruin of the soul and nature, and to the spoiling of the body. This is divided into two parts: the first is about what is suitable neither for food nor for medicine, not only among animals but also among plants. These are the animals which have poison, like rapacious animals which have nails and fangs, or animals which feed on poisons, and deadly plants which, on being eaten, spoil the intelligence and the entire body. But, notwithstanding this prohibition, when within [the food of] this part there is a kind which harms a healthy man but heals a sick man, the healthy one shall abstain from eating it, while the sick one is permitted to eat it as medicine.

The second part deals with one who is doubtful about food and with one who scandalizes⁹ his neighbor by eating it. To these two parts the Apostle Paul refers when he says in the letter to the Romans: 18. "Strengthen the one who is weak in faith and do not be scandalized in your heart. The one who believes that everything may be eaten, let him eat everything, and the one who is weak in his will power, let him feed on vegetables; but the one who eats everything shall not despise the other who does not eat, nor shall the latter judge him who eats, since God is in him. And it is known, and I believe, that there is nothing unclean in Our Lord Jesus Christ. But if there is a man who doubts that it is unclean, it will be unclean for him only, since everything is clean, but is evil for the man who eats with doubt.¹⁰ If it is not good, we shall not eat meat nor drink wine nor do any other thing by which our brothers may be scandalized. And the one who hesitates, if he eats, is condemned, since he has not acted with faith, and whatever does not proceed from faith is sin. And we, the community of the faithful,¹¹ must bear the weakness of the waverers."¹²

And St. Paul also said in his first letter to the Corinthians: 7. "Everything is allowed to me, but I must not give everyone power over me, since food is meant for the stomach and the stomach is meant for food."¹³ 9. "As for the eating of that which is sacrificed to the idols, we know that the idol is nothing in this world

6. Acts 10, 9 ff.

7. ገቡለ : "hidden," explained in the gloss as: "To be understood as an allegory."

8. ክሁት : "obvious, clear," explained in the gloss as "literal."

9. ዘያናፍት : "one who makes another doubtful," in this context means "one who scandalizes others."

10. ዕቅፍት : "scandal," but in this context "doubt," POEFNM 284-3.

11. ጉባሌ : ጽኑሉን : "community strong [in faith]."

12. Rom. 14, 1 ff.

13. I Cor. 6, 12.

makes them proud. Monks shall wear rough clothes of wool or something similar.²³ Regarding laymen, the canons have not specified the rules governing the clothing permitted to them.²⁴ Everyone shall dress and adorn himself as he wishes, according to the fashion of the time, as will the dependents of the magistrates.²⁵

Priests shall not wear the clothes of soldiers, the clothes of carpenters, or the clothes of scholars. From all these the disciples of Christ shall abstain; they must guard themselves against having those clothes, since the Lord has taught His disciples not to have many clothes, and praised John the Baptist because he did not dress in soft clothes. The admirable Prophets, the saintly Apostles and the wise who, like John the Baptist, did not use [fine] clothes [deserved the same praise]. John Chrysostom has said: "The faithful must be recognized by their meals, by their adornment, by their talk,²⁶ their behavior²⁷ and similar things, since our law has delivered us and estranged us from all this." And the wise St. Basil has said: "We must arrange our clothes to cover our nakedness, must have what is sufficient for our need, and must protect ourselves from cold and heat and observe the rule of the hermits. And the observance of this rule helps to distinguish us from laymen, since laymen dress in what is available for the greater number of them, but the dress of monks must be rough clothes of wool."

As for the dwelling-place, it must be according to this law, which is for those who are perfect, who reject transitory things and look for durable things. [As it is good that] their food and their clothing be according to that which is established for them; that is, only enough to keep off afflictions, so also is the precept regarding dwellings; that is, it must be big enough to shelter those who dwell in it and to accommodate the food necessary for them.²⁸ Our Lord Jesus Christ has said that we must live according to the example of His deeds when He became man, and taught that we must walk in perfection, according to His word and His deed. He said to us that He had no dwelling, no place to lay down His head. And His Apostle who followed Him praised those who dwelled in rocks and caverns and said that the world was unworthy to contain them.²⁹ The saints and the wise men considered themselves as travellers and pilgrims in this world; in fact, such is our life in this world. And Chrysostom has said in his admonition that regarding the dwelling of the guest and pilgrims, it is known what they request, and it is provided to them according to their need at that moment. Now, one who considers the last divine and heavenly dwelling, and searches for it and thinks

23. The "something similar" is an allusion to the ዳባ : typical monastic clothes made of the skin of the cow or the antelope and dyed yellow. ዳባ : also denotes the cotton clothes used by monks and dyed with a yellowish substance squeezed from the bark of a plant called ወይባ : POEFNM 287-2.
24. That is, the canon gives no detail as to how laymen should dress. ገሩያን : "the chosen," denotes ዓለም : የሚረገጥው : "those chosen by the world," namely "laymen" (2/214). According to POEFNM 287-2, ገሩያን : means ቡ-ገሩያን : "chiefs."
25. The dependents of magistrates shall dress according to the wish of their master. The Arabic text says: "Everyone ... according to his profession" (3.214).
26. Gloss: "by the scarcity of their meal, by the poverty of their clothes, by avoiding affectation in their speech."
27. From the gloss.
28. Arabic text: "Since the purpose of this excellent law (the Christian law), which turns its back on transitory things and encourages those which are durable, is to put food and clothing to the service they were meant to perform, that is, only to ward off injury, so also with dwelling-places ..." (5.215).
29. Heb. 11, 38.

in his mind that he will not remain in this earthly dwelling but for a brief time, why should he tire himself in enlarging and making this [earthly] dwelling strong, and why should he complain for what he will leave, though it is fine?

As for trades, all are permitted except those of worldly works which are against the will of the law, such as sorcery, witchcraft, the making of idols or their ornaments, the evoking of demons, sorcerers, and dancers, and the amusing and rhythmic noise made by feet keeping time. Thus has said Abulides (St. Hippolytus) in the eleventh canon: "And every silversmith shall abstain from making idols, neither shall he be an artisan of statues, nor a painter, nor shall he engage in any other handicraft." And if someone, after baptism, is found doing work which is not allowed to [Christian] people, he shall be put apart until he repents.

GLOSS: The canons, written to the Christians from the precepts of Paul, have said, 19,20: Whosoever makes idols and plays musical instruments, dancers, those who desire to please³⁰ [others], and people like this, shall be set apart,³¹ otherwise they shall be driven away by excommunication. And it is known that the things mentioned, which are forbidden, are certainly not necessary for men; it is better that the people who do these things be absent than that men be ruined.

The trades suitable for Christians in corporal life are divided into two parts: the first is what is necessary to sustain the body, such as sowing, reaping to gather food, fishing, weaving, sewing [clothes], building, making instruments for dwelling, and preparing medicine in order to obtain health and to drive out sickness.³²

The second part deals with those trades which are necessary to execute those enumerated above, such as the trades of carpenters, smiths, scribes, millers, bakers, dyers [of clothes], teachers, and merchants, since commerce is obviously necessary to bring into a country things found in another; sailors and [ship] builders³³ are meant for commerce. And it is good that one learn from all these trades only what is required to supply the necessary needs. Do not turn your whole attention to seeds and to multiplying fruit-plants and flowers; neither to the weaving of colored clothes nor to the multiplying of the weave nor to the construction and adornment of the house, nor to making it large and high.

The explanation of the wise Chrysostom dealt with these things when he commented on the Gospel according to Mathew.

30. Those who desire to attract someone's attention. Arabic text: "...female singers" (2/217).
31. Arabic text: "...they shall abstain" (3/217).
32. Arabic text: "... the physician, in order to keep people healthy" (6/217).
33. Arabic text: "farming" (1/218).

CHAPTER XXIV

BETROTHAL, DOWRY, MARRIAGE AND WHAT FOLLOWS THEM

This chapter is divided into six sections.

Section I.

Before dealing with marriage, we must recall what are its primary purposes,¹ for the primary purposes of marriage are two: the first is the procreation of offspring, in order to preserve the lineage. It is demonstrated by the word of God, Who said to the first progenitors: "Increase and multiply."² This cannot take place except through carnal union. The second purpose, since concupiscence is rooted in animal nature, is satisfaction of the desire for carnal union, wherefrom come offspring. And this responds to two necessities [of life]: first, the satisfaction of concupiscence by carnal union for procreation; second, the cooperation which takes place between the married couple to alleviate the burdens of this life. This is demonstrated by the word of the Highest, Who said in regard to Adam: "It is not well that Adam should be alone; let Us make for him a companion who may help him."³ The primary end of marriage is to procreate, to remove concupiscence, to bestow mutual help, and to be united. Marriage, as with early man and in accordance with the primary Law mentioned before,⁴ means that man must take a woman [in marriage].⁵

Marriage also concerns the latter Law, promulgated in the fulfillment of this world;⁶ and it is divided into three parts.

First part. Since the fire of concupiscence causes many people to fall into transgression of the law, marriage similar [to that of Adam] is thus: it is good that man take a wife. This is manifested by the statement of Paul, who said in his first letter to the Corinthians: 7. "I say this to those who have no woman and to the widows: it is good for them if they remain as I am. But if they cannot be contained, let them marry, since to marry is better than to burn by concupiscence."⁷ [Paul also shows this] when he says in the first letter to Timothy, 5, on the wandering widows: "I would that the young women among them be married, bear children, and have their households to manage, so that the enemy may not find the occasion for derision."⁸

Second part. It is good for the one who can overcome concupiscence by the goodness of his temper, by his good habit, or by the good example which he follows, to abstain from marriage. And the saying of the Apostle Paul in the first letter to the Corinthians shows this: 7. "As for the question on which you have written to me, it is a good thing for man not to approach woman, but for avoiding fornication let every man live with his own wife and every woman live with

1. ነገር : "thing", stands for መግባቢ : "necessity, purpose, scope," POEFNM 293-3.
2. Gen. 1, 28.
3. Gen. 2, 18.
4. The Old Testament.
5. POEFNM 294-3 is followed here. Gloss: "as Adam did...."
6. The New Testament.
7. I Cor. 7, 8.
8. I Tim. 5, 14.

her own husband; I say this according to that which is possible for the weak, not by an absolute imposition. But I wish that everyone should be in the same state as myself, in purity. Also, since God has bestowed His grace upon everyone, there is one whose grace is [in living in marriage] and another whose endowment is [in living in virginity]. Concerning virginity, I have no commandment from the Lord, but advise [you] regarding it as a man to whom God has given the grace to be faithful.⁹ I believe that virginity is good, for this is an age of wickedness¹⁰ and [in such an age] it is better for man to remain thus.

"If thou, O man, art tied to thy wife, seek not to be separated from her and if thou art one who does not desire a woman, do not seek her, since affliction and distress of body shall befall those who are in this condition. But I spare you, and I say to you, O brethren, since the day is near and therefore I would have you remain free from affliction, for he who is unmarried is concerned with his Lord's claim, that is, how he is to please God, but he who is married is concerned with the world's claim, that is, how he is to please his wife. This is divided into two parts, since between the one who is married and the one who is a virgin there is a well-known difference.¹¹ A woman who does not belong to a man is concerned with things which bring her near to God, so that she may be pure in her body and soul; but the woman who is married is concerned with the world's claim, that is, how she is to please her husband. And I said this for your own profit, not to entrap you, but for the purpose that you may always have the care of drawing nearer to God, according to the good example, having no care of the things of this world. And if anyone thinks that he will be derided and is ashamed because of his virginity, since the time of marriage is passed, it is suitable for him to marry; let him do so, and he is not a sinner.¹² But if he has made up his mind to preserve his virginity, none shall press him to transgress, since he has done the best deed. And everyone who gives up his virginity for marriage has done well. But the one who does not give up his virginity for marriage has done better."¹³

And the Apostle said this in conformity with the words of Our Lord, Who said in the Holy Gospel according to Matthew, 57, at the end of the chapter: "There are eunuchs who have made themselves eunuchs of their own will for the Kingdom of Heaven; and who may bear, let him bear."¹⁴ And He said this in reply to the words of the disciples when they said to Him: "If the law of the man with his wife is so, it is not right to marry."¹⁵ With this word Our Lord did not say to cut off the organ of procreation, since this [deed] drives one away from the Kingdom of Heaven, as the earlier warning regarding this deed, laid down in the part which deals with this prohibition, provides.¹⁶ He said to cut off the act [of lust]¹⁷ in order to eliminate the [evil] desire and to reach the Kingdom of Heaven. [The same can also be deduced] from these words, which are written in the Gospel

9. That is, to remain unmarried (5/220).
10. An alternative interpretation: "It is preferable to remain single, as in times of stress one would find it burdensome to support a family" (1/221).
11. Following POEFNM 297-1. The equivalent biblical passage is I Cor. 7, 34.
12. A distortion of I Cor. 7, 36 which reads: "But if any man thinks that he behaveth himself uncomely toward his virgin, if she pass the flower of her age ... let him do what he will, he sinneth not: let them marry."
13. I Cor. 7, 1 ff.
14. Mt. 19, 12.
15. Mt. 19, 10.
16. See Ch. IX. *supra*.
17. Gloss: "To cut off (to abstain from) the deeds by which concupiscence is satisfied."

according to Matthew, Mark and Luke: "I promise you there is no one who will leave his wife for the sake of the Kingdom of Heaven, and who will not receive in compensation many times double in this world, and in the world to come, everlasting life."¹⁸

Third part. Marriage, permitted as we have seen to the one who finds himself in the preceding two conditions,¹⁹ is permitted in order that he may not be burned by the fire of concupiscence; it is permitted to the one who is not free from concupiscence. And this is evidenced by the words of the Apostle who said: "If thou wantest to marry, it is not a sin, and if a virgin marries a man, there is not, equally, sin upon her."²⁰ EB 11. "Marriage is honored everywhere, and the marriage bed is free from stain."²¹ BAS 5. But marriage subsequent to a vow of chastity is a shameful thing. ENQORA 18. Whosoever has made a vow to preserve [his] chastity shall observe its terms; otherwise he shall be condemned as one who marries two women simultaneously.

So far we have dealt with marriage concluded with the first woman; marriage to a second woman is different. It is inferior to the first. With respect to this second wife it is prescribed in the canons that she shall not have the nuptial blessing, but upon her the penitential prayer shall be said. BAS 43. If the turtle-dove, which is not rational, abstains from a second marriage, the more suitable will it be for [man], the rational animal, [to abstain]. As a second marriage is not commendable, for this reason, this law must be observed. In fact, the second marriage lowers the honored, namely the priests, from their honor; it is a despicable thing in them. A third marriage is despicable and beyond this there is no lawful marriage among us. Taking a second or a third wife in addition to the lawful one is not allowed, because it is manifest fornication,²² as already said, and as appears from what has already been said on the purposes of marriage. After marriage is performed the said [carnal] union must not take place except to remove the trouble of concupiscence or to have offspring who please God and serve Him.²³

It is also clear that it is not proper for a person to become betrothed if it is known through his character, manifested by his conduct, his temper and intelligence and his ability to overcome the [evil] thoughts which originate in him as a consequence of the troubles of concupiscence, [that he has a tendency towards a life of chastity], and if, having been overcome by concupiscence, he in turn extinguishes it and keeps it [under his control].²⁴

18. Mt. 19, 29; Lk. 18, 29.

19. The two conditions are the intention to procreate and the intention to extinguish concupiscence.

20. I Cor. 7, 28.

21. Heb. 13, 4.

22. Thus, following the POEFNM 299-3. ተጋብሎ : rendered as "taking," literally means "gathering," that is, the gathering of many priests during the marriage ceremony in order to confer upon it a certain appearance of solemnity. At the celebration of a second marriage the presence of only one priest is prescribed; therefore, no gathering of many priests and no solemnity. Hence the following alternative rendition of the above passage: "The gathering [of many priests] at a second marriage is not allowed, because this marriage is manifest fornication." Taking this rendition, the last words ዝሆኑት : ክሆኑት : "manifest fornication" should be replaced by ትእዛዝ ርቀት : ስእትት : "a sign of depravity," and the sentence should run: "because this marriage is a sign of depravity," *ibid*. It is fairly clear that the reference is to bigamy and not to consecutive marriages by a widower.

23. An alternative interpretation is that ሱት : "him," refers to the father, hence "offspring who ... serve their father," POEFNM 299-3.

24. Arabic text: "A person whose future temperament and inclination cannot be predicted, should not be engaged on the mere strength of one's opinion that he will be like this or that regarding the trouble of concupiscence, and that he will succumb to it or that he will overcome and dominate it" (1/224).

The bulk of the contents of this chapter is excerpted from the canons known as Abtelisat and is in the first eleven chapters. And you must know that the ends of marriage are [those] three which have been mentioned and which are according to the deeds of the Wise and Highest Creator and according to [the deeds of] His servants who followed Him. We have never found one of them who desired the law of marriage for any reason but the intention to beget offspring.

And if a man copulates with his wife after her pregnancy becomes evident, this is not proper; he is not allowed to do so.²⁵ And one who desires her [during her pregnancy] must desire her for mutual help only. If it is definitely known that someone fell into that in which there is no union,²⁶ he must hear this admonition.²⁷

Marriage, as regards the intention of those who want to use it to attain other ends, is of several kinds. There is the one who desires marriage only for carnal pleasure, as has been mentioned, and does not wish other than this; he wants neither the procreation of offspring nor reciprocal help. There is also the one who sets about preventing conception and pregnancy on his side or on the side of his wife; he is interested in the act of copulating with her solely to derive carnal pleasure, and bears with patience, because of her beauty, his wife's poverty and the low stock of her family. The intention of these [people] however, becomes good after a long time.²⁸ There also is the one who desires marriage because of [his wife's] great wealth or high honor, to boast of the relationship or to show himself off in the company [of his wife's family]. And for any of these reasons there are some who tolerate the ugliness of their wives for the sake of wealth, or who do not mind the low stock of their family. There are others who marry women because of the honor which their family enjoys, and do not mind their poverty or the foolishness²⁹ of their family. There is the one whose prudent parent or whose magistrate or some such person arranges his marriage while he is still young, to prevent the competition of another for the special beauty of the woman, or because of the conspicuousness of her wealth, the honor of her relatives, her ornaments or her intelligence: he does not want this woman to escape [his son]. He does this also to prevent the trouble of concupiscence which causes the corruption [of the young], and to shield [his son] from evil desires; or because of the eagerness of a mother who is going [to die] to be pleased by [the marriage of] her son for one moment [at least], desiring to see it before her death or before she falls into poverty;³⁰ or [he may do this] just to spite someone, or from motives of rivalry or

25. The POEFNM 301-1 and the gloss put: אַחַד מִן הַבְּרִיּוֹת לֹא יִשְׁכַּב עִם אִשְׁתּוֹ בְּעֵת הַהַרְבֵּל "This is something that should not even be spoken of." The POEFNM goes on to formulate the following explanation: "He is not allowed to do so because if the child in the mother's womb is a male the man's act would constitute sodomy; if the child is a female it would be incest."
26. That is, intercourse in which there can be no conception because the woman was already pregnant (text/224).
27. The Arabic text is completely different and runs: "A man should not have carnal union with his wife after her pregnancy becomes evident, though [abstaining from the union with a pregnant wife] is rare and there is no prohibition imposed. You will not find one who wants only mutual help in marriage, because in that case the carnal union, an important thing in marriage, would not take place. Such a thing, [to abstain from carnal union] is an extraordinary tale [told about some rare persons only]. As regards the intention of other people ..." (3/224).
28. When the fire of concupiscence calms down, they lead their married life in conformity with the ends which are proper to it.
29. חֲסִידוּת: "foolishness" is interpreted as the attitude of lawlessness which may be adopted by the family of the wife, as by people who live clandestinely or by brigandage (אֶלֶּף : עֵשֶׂר : אֶלֶּף : אֶלֶּף : אֶלֶּף) POEFNM 302-1.
30. Arabic text: "... or because of the desire of a mother who sets about to enjoy this marriage and draw this satisfaction before dying or before she becomes poverty-stricken" (3/226).

from a desire for dominance. Some desire offspring with a good intention, and that is to have a child who will succeed them, if they own much wealth.

We cannot find among the aforesaid categories [any who marry with] an intention to abstain from carnal pleasure, nor can we find another category which is not linked with this pleasure and which does not adhere to it. Many conceal their desire for the pleasure of concupiscence, feigning that they search only for mutual help to provide food.³¹ And behold, a wise man has found the interpretation of this by saying that concupiscence is the mother of cowardice, fatigue, misery and ignorance; truly it is the mother of sorrow to the layman and clergyman, since it entails many desires which are not actually necessary, and makes them necessary. Let us pray to God that He give us harmony,³² help, strength and mercy. Amen.

Section II. Promise of marriage:³³

It is in four parts.

First part. Betrothal is not good for someone whose intention to marry is not clear.³⁴

Second part. If the person who is to be betrothed is not indisputably under the authority of another, he may arrange his betrothal personally, or by writing a letter, or with the help of someone whom he would like to be an intermediary. The declaration of betrothal may be made by himself,³⁵ by means of a letter, or by the person whom he wishes to be an intermediary.

Third part. Let us first mention the prohibited forms of marriage, so that no one may fix the dowry and the betrothal for them. This [subject] is divided into fifteen parts.

Part 1. Marriage between blood relatives, even if they are not relatives by lawful marriage, [is forbidden]. TS 6. Blood relatives are of three kinds: [a] ascendants, such as parents, grandparents, and those who follow in an ascendant line; [b] descendants, such as children and children's children who follow in a descendant line; [c] collaterals, such as father's brothers and sisters, mother's brothers and sisters, brothers, and children of brothers. They are also related, and interrelated, because they are born from the [same] parents and grandparents.

And Christians, on this matter, hold two different opinions. According to the first opinion, marriage is prohibited until the third degree and is permitted from the fourth degree onwards. Those who adhere to this are the Copts, the Nestorians and a part of the Syrians, and that is pursuant to the canons of the Apostles, since these canons did not prohibit marriage from the fourth degree, and to the canons of the Council of Nicaea, which agree on this [with the canons of the Apostles].³⁶ and especially the canons of the Kings. None of the said canons prohibits marriage

31. That is, whatever may be the intention which moves one to marry (beauty, wealth, etc. of a woman), it cannot be separated from carnal pleasure, even if someone covers it up by feigning that he marries only for mutual help.
32. ተስፋፋይ : "harmony," denotes the physical equilibrium by means of which concupiscence is mastered, POEFNM 303-1.
33. Although the heading of this section is በእንተ ሕግ : "promise of marriage," it deals mainly with matrimonial impediments. Betrothal is dealt with in the next section. It should also be noted that ሕግ means "dowry."
34. Arabic text: "The betrothal of one, for whom the consequent marriage is not valid, is of no effect" (4/227).
35. More precisely: "The consent to be engaged may be given..." ወተከሥተ ሕግ ለሰጠው ሰጠው ለሰጠው ሰጠው : "The declaration of betrothal may be made by himself..." is also interpreted as ግዴታ ለሰጠው ሰጠው ሰጠው : "giving presents is up to himself," POEFNM 303-3.
36. Arabic text: "... [with] the greater part of the canons" (4/228).

neither his brothers nor his children, nor the children of his children, nor the children of his wife nor the children of any one of them [may marry] the children of the other. The woman shall not give her daughter in marriage to the man whom her own husband sponsored at baptism, nor shall the man give his daughter in marriage to the man whom his wife sponsored at baptism. Between all these there is a spiritual relationship, and anyone who does this will be considered an idolater and a sinner, until he separates himself [from the other partner] and does penance for his sin. Those who are not mentioned here are permitted to marry. And about the marriage of the sponsors at baptism a provision has been made on which there are conflicting views and which is not observed. It runs thus: There shall be no marriage between them and their children and the only forgiveness for this spiritual sin is obtained by separating and doing penance. Their penance must consist in embracing monastic life, if they wish the salvation of their souls.

Part 3. Marriage of relatives by dwelling, even when they are no longer under the authority of those who brought them up and even when the latter are separated, [is not permitted]. These are those who were weaned by one breast or were brought up as one's own children, and their children and parents, be they their fathers or the fathers of their fathers, the brothers of their fathers, the brothers of their mothers, the sisters of their mothers or the wife of their father. Never shall the father marry the woman who is [like] his daughter and was brought up near him. This paternity exists in the following situations: if my grandfather brought up a girl whom my father called his sister, she is my aunt by virtue of having been brought up [with my father]; or if my mother nursed a girl and brought her up with me she is my sister by dwelling. This is found in the canons of the Kings. As for the book of the Didascalia, in the eighteenth rule it commands that a man should marry the boy whom he brought up as his son to an orphan. This is an act of humility and mercy on his part, and is fitting and good.

GLOSS: It is also written in the canons of the Kings.

Part 4. Marriage between relatives by affinity, other than that by consanguinity, [is not allowed]. These are the fathers' and the grandfathers' wives and their sisters, their mothers and their grandmothers; the brothers' and their sons' wives, their sisters, their mothers, and their grandmothers. And the relatives of the wife who are: her grandmother, her mother, her father's sister, her mother's sister, her sister, her daughter and her son's daughter, and the wives of her relatives who are in this degree. And each [marriage] forbidden to the wife [because of affinity] is also prohibited to her husband.

Part 5. Marriage of the guardian to the woman whom he is charged to settle in marriage and whose property he is appointed to keep [is not allowed]. Neither the guardian, his son, nor his brother may marry the ward until the ward attains the age of twenty-six years and the guardian discharges his duty of accounting [for her property].⁴⁵

Part 6. It is not good that the wife of the master marry the slave her husband manumitted.

45. This passage is not constructed well in the Ge'ez text. Arabic text: "The marriage of a guardian with the one whom he is charged to settle in marriage, and the marriage of the administrator or his son or brother with the one over whose property he has been appointed administrator, ... [is not allowed]" (2/232). The NLF says ከገንዘብኛ፣ ጋር፣ ሊጠብቃት፣ እኳላ፣ ጭጠን፣ ስትደርስ፣ ሊያጋባት፣ ያስጠበቁትን፣ ግግባት፣ እይገባዎ፣ "The person appointed to watch over a ward and her property and to give her away in marriage when she attains the marriageable age, may not marry her himself." Cf. Dig. XXIII, 2, 59-60.

Part 7. Marriage of a member of the faithful with one who is an unbeliever and has no part with him [is not allowed], since he would add [sin] to his deeds of perfection.⁴⁶

Part 8. Every impediment to the carnal union necessary in marriage [is an impediment to marriage]. This may be a natural impediment, as with a eunuch from the mother's womb—that is, he who by his nature cannot accomplish the mentioned carnal union; a hermaphrodite who has the shameful parts of both the male and the female together in one place; and a woman who has an added bone which hinders union. As for impediments which come after [birth,] they are of three kinds: one is the case of a eunuch, the second is that of an insane man, who is deficient in intelligence, and the third is the case of disabling diseases like sores. As for leprosy, let it be left to the choice of the one affected by it. And we have mentioned the provisions of this part in the chapter which deals with annulment of marriage.

Part 9. Marrying a woman who has been condemned justly for adultery and has been divorced with good cause [is not allowed].

GLOSS: It is said in the canons of the Kings: No one is permitted to marry in haste a woman divorced because of adultery; but it is necessary to wait until she does penance, until her penance is well known and until her neighbors bear witness for her. It is then permitted to marry her—not, however, in the presence of [many] priests but before only one priest, and not before a bishop.

Part 10. Uniting with two or more women in marriage simultaneously⁴⁷ [is forbidden].

Part 11. The fourth marriage and onwards [is prohibited].

Part 12. Marrying nuns [is prohibited].

Part 13. Marrying a woman who has passed her sixtieth year [is forbidden].

Part 14. [It is not allowed] to marry a woman who has not completed the time of mourning for the death of her husband, which is a full year or ten months from his death.⁴⁸ The man who marries before this time elapses is barred from the inheritance of his [late] wife, and the woman, from that of her [late] husband; [each is barred] from inheriting what was bequeathed to him and to her. This period impedes marriage, but not betrothal and proposal; but let it be with prayer.⁴⁹

Part 15. In case a man and a woman do not consent to a marriage [arranged] by another, or if the consent is extracted with violence, that is, if any kind of constraint is used, [such a marriage is forbidden]. This is divided into two parts: First, a tutor may not betroth a ward without the latter's consent; nor shall there be marriage, unless there is the consent of the two who marry and of those under whose tutelage they stay. A defect in the consent of the tutor impedes marriage and the prayer of wedding, but not the betrothal and the proposal. Second, neither the chief of a country, its judges, the sons of the chief, nor any of his men, shall

46. NLF: በገደግደት፣ ላይ፣ ከእደትን፣ በትሩፋት፣ ላይ፣ ኃጢአትን፣ እንዳይጨምር፣ “Lest he substitute apostasy for faith, and sin for perfection.” Arabic text: “It is forbidden to the Christian to marry an infidel, as is said in the appropriate chapter” (3/232).

47. The POEFNM 312-1 says: “The gathering of more than one priest at a second or later marriage is forbidden.” Arabic text: “having two or more wives ...” (5/233).

48. *Annus lugendi*. Cod. V, 9, 2.

49. It means that one must pray to be saved from future mourning and for rest for the soul of the deceased, NLF.

bring about the betrothal of any of the women [of that country] by taking them away by force.⁵⁰ It is the same if the girl has not reached the age of womanhood, but this does not impede proposal and betrothal.

Fourth part. TS 2. If the betrothed couple wishes to embrace the monastic life, after the dowry has been given, the man shall retake what he has already given to his betrothed, and she shall return what she took, without redoubling it.

Betrothal and proposal come before marriage in order to make certain that consent is given after perfect counsel, and to make possible an inquiry [into each other's character] during the length of time they agreed upon. [This length of time is also established] so that their love may be strengthened with consent; so that the young man on whom they agreed may be preserved until he attains manhood; so that he may be the first to have her; so that the hope of a pure marriage may help the preserving of purity; and so that, during this interval, he may turn his attention to preparing whatever is necessary for the marriage, may fortify his desire for the union, and may follow the teaching of the wise Creator—praise be to Him!—Who said: "It is not well that man remain alone, but let us make him a help-mate of his own kind."⁵¹ He made the promise, and then He did what He promised.

Section III. Betrothal:

It is divided into three parts.

First part. The definition of betrothal and the precepts concerning it:

TS 1. Betrothal is a pact and promise which precedes marriage. It may be performed either by means of a letter or without any writing. MAG 1. And the pact is made conclusive as follows: the couple must conclude the betrothal in the presence of two elder priests, who shall impose their hands on them, [bless them] with the cross which seals [their union], and [place] rings [on their fingers].⁵² The betrothal shall be arranged and registered, as shall be the consent of the future spouses and the consent of the tutor.⁵³ As for the girl who is under tutelage, if her tutor wishes to betroth her to one who is unfit and harmful for her, she may refuse even if the tutor cannot take back his word.⁵⁴ And the children of those who are demented in intelligence, even if they have a tutoress,⁵⁵ may not need the consent of their fathers when they are to be married nor at their betrothal; this, however, will depend on the decision of the judge.⁵⁶ MAK 52. Marriage without outfit and dowry is permitted.

TS 1. The woman who is in mourning for her [late husband] shall not be prevented from betrothal. One who is not beyond seven years shall not be betrothed. And if a person is betrothed but has not fixed specifically when the marriage will

50. In the text, ከመገደብረረድላት፣ "to betroth with help," but it is explained as ዘርድ፣ ግጭት፣ "to betroth by kidnapping," that is, to carry the woman off by force, NLF. Compare Cod. V, 4, 6.

51. Gen. 2, 18.

52. NLF read እጅ፣ በእጅ፣ ላይ ይዘገቡት ለአባባብ፣ "[betrothal shall be concluded] by joining the hands [of the betrothed couple] and making them hold the cross...."

53. This rendition follows the POEFNM 314-3 which uses ሐገኒ፣ "tutor" instead of the text's ሐገኒት፣ "tutoress."

54. Arabic text, in connection with the preceding passage: "... [so also] the agreement of the girl under tutelage with her tutor that she will not oppose the word given by him [shall be registered]. But she may oppose him if ..." (2/236).

55. Arabic text: "... although they are under tutelage" (3/236).

56. Cod. V, 4, 25; Inst. I, 10, pr.

take place, the period shall be two years if he is present [in the country]; if he is traveling far, the interval shall be three years. If betrothal extends beyond this period the betrothed girl may be given to another in marriage, but the lapse of time shall be four years if there is an evident reason, such as sickness, debts to be paid off,⁵⁷ an offense punishable with death,⁵⁸ or a distant journey because of difficulty.

A father may break the betrothal of a daughter who is under his authority, but not that of one who is independent. The guardian cannot break the betrothal of the one who is already promised.⁵⁹ MAG 1. If those to be married are orphans who have not attained majority, if none of them has a father, a mother, or a guardian, and if they arrange the betrothal themselves before witnesses and later repent, they shall remain betrothed until they reach the age of fifteen years. If one cannot maintain the other because of inability to fulfill his duties [as husband or wife], when they attain this age, being in full possession of their reason, they shall be permitted to do what they like — to unite [in marriage] or to separate. ENQORA 10. As for the young woman who is under the tutelage of her parents or is independent, if a man betrothed her, she gave her consent, and they ate and drank together,⁶⁰ but if after this an overbearing person took her and carried her away by force or deceit and had carnal intercourse with her, the woman must return to her intended spouse, provided that he accepts her again. If he refuses to, the overbearing person must marry her if he has no wife.

GLOSS: In the canons of Epiphanius and others it is said: He who commits fornication with a young virgin shall not marry her unless her first betrothed leaves her, if she is already betrothed; but if she was not betrothed the case shall be settled pursuant to the choice of her family. After this, the overbearing person shall be forced to marry her even if she is poor and ugly.

Second part. The earnest given at betrothal.⁶¹

Earnest is given at betrothal. If the one who took it refuses, and breaks the agreement [of marriage] after he has taken it, he shall return double of what he took. And if the one who gave the earnest breaks [the agreement of marriage] he shall forfeit the earnest. But if death occurs, there are two opinions regarding it. The first, in TS 2, is this: If the marriage was not delayed by the fault of the deceased, the survivor shall return what he took. And the second, which is more valid, is: MAG 57. If the woman dies, the future spouse shall recover what he gave her from her family, except the food and drinks he provided. But if the man who owns the dowry is dead and has no heir, she will keep what she took, since she deserves it more than the others; she lost her husband, she being a young betrothed girl. But if the deceased has heirs, they shall take back half of his property for themselves⁶² and she shall keep the other half, because the marriage was certain to be concluded.

57. If a person needs some time to obtain money by work or trade, in order to pay off his debts (5/236).
58. If he has killed someone, until he becomes reconciled with the relatives of the deceased, POEFNM 315-2.
59. Arabic text: "[The guardian cannot break the betrothal of the ward] contracted before his appointment as guardian" (2/237).
60. That is, if they celebrated their betrothal by giving a banquet.
61. The gloss says: "Giving a part of the dowry."
62. Gloss: "... the profit [gained from his property]."

TS 2. Whatever was decided upon during the lifetime of the father and was agreed to by him shall not be changed. If the father of the young girl or her mother received the earnest, or if her grandfather received it for her who is the daughter of his son, and if both the betrothed parties have attained marriageable age, double the earnest shall be given back if they refuse to celebrate the marriage while it was possible to do so; but if it was not possible for them, they shall give back the earnest without doubling it. And the same rule shall be applied to the master of a young girl,⁶³ who has power over her and has taken the earnest.

Majority for the man is reached with the completion of the twentieth or twenty-fifth year of age, and for the woman, with the twelfth or fifteenth year of age.⁶⁴ As for terminating the authority of the one who has been appointed as their guardian, they shall ask the judge to rid them of the tutelage, so that they may administer their affairs and their property themselves, to their best advantage, since they are capable of administering their affairs and their property; and the judge shall testify to this. From then onwards they shall do whatever appeals to them by consulting each other.

In case a betrothal is definitely arranged, the earnest for the marriage has been given, and the betrothed refuses to unite with her partner because of his bad nature, because of his many faults,⁶⁵ because he violates the law, breaking it by following the dictates of his mind,⁶⁶ because he is one who cannot have a union with her—that union which is useful for procreating children—or because of other reasons which are truly impeding: [in all these cases], if there are witnesses concerning this, that this woman and her parents knew all this before taking the earnest, they shall blame none but themselves.⁶⁷ But if they were ignorant when they received the earnest at the time of the betrothal, or if after they received the earnest any reason which justifies the withdrawal appears, double shall not be demanded from them when they return it.

Third part. The presents given before marriage:

TS 3. The presents a man gave before the marriage shall be delivered back to him if the marriage is not celebrated. MAK 56. But if the man himself refused to marry the woman, of his own will, he shall lose his earnest and all the presents he gave to her. And if the woman refuses to marry him, she shall give back whatever she has of the earnest and shall return the presents he gave her just as she did with the earnest. TS 3. The presents are those given for betrothal and not for marriage.⁶⁸ As there are presents to be given on the day of marriage, they shall belong to her, if the woman is in her own house,⁶⁹ because she is the betrothed of one who betrothed her a long time before.⁷⁰ If she is in the house of her intended spouse, the presents belong to the woman,⁷¹ and the creditors of the man shall not take

63. This may be her father, guardian, or administrator.
64. The age of twenty years is for the sons of wealthy families, who are supposed to be learned enough at that age. The age of twenty-five years is for the poor and unlearned young men. The same reasoning applies to the ages given for women (2/239).
65. Gloss: "... [because of] his fornication."
66. Arabic text: "... if he is separated or causes schism in the faith or becomes a heretic" (7/239).
67. Gloss: "they shall pay back double the earnest."
68. Arabic text: "Presents are due to the betrothed, not to the wife" (2/240).
69. ራብን ፡ ቸላ ፡ . . . ተገንጽ ፡ ብትሆን ፡ "if the woman is self-supporting ..." POEFNM 319-1.
70. Or, "... who betrothed her coming from a distant place," POEFNM 319-1.
71. In POEFNM 319-1, the passage is modified to read: "If she is in the house of her father the presents shall go to him."

anything from the presents he gave to his betrothed. 9. The woman shall have a right of priority before the creditors of her husband in taking the dowry, but she shall not have priority on previous creditors for the presents given before marriage.

Section IV. The duty of the father towards his son concerning marriage:

The father shall give on behalf of his son, as he is the lord who accepts on behalf of one who is under his authority.⁷² TS 3. The father may not force his son to marry if the son, being under his authority, wishes to live in purity; but if the son is dissolute in his behavior, he cannot refuse to obey the command of his father. 33. If the father decides to give his daughter in marriage, or the daughter of his son, or the daughter of his daughter, and he gives her a wedding outfit according to his means, but she refuses and prefers shameful deeds, she shall be disinherited. 4. Sons must not refuse marriage, and thus harm their parents by making them indebted to return the wedding outfit and the presents which they took before marriage.

By virtue of their position as parents and as those who give the wedding outfit and presents before marriage, parents are not allowed to break the law of marriage in any respect.

The guardian who prevents his wards from marrying by violence, stops others from arranging their marriage, and does not give them a wedding outfit, shall be ordered by the magistrates to have them married and [to give them] their outfit. As for a woman beyond twenty-five years of age, if her parents do not care to have her married, she is permitted to apply to the magistrates, so that they may command her parents to have her married and to give her an outfit in proportion to their means. But if she is independent and has attained her majority, she may take a husband in the manner permitted by the law, even if her father opposes it. And the same applies to any child, whether male or female.

If a prisoner⁷³ does not return within the period of three years, the son may get married.⁷⁴ And if the whereabouts of the father, and whether he is alive [or dead], are not known during these three years, his children are permitted to marry anyone they like, according to the precept of the law. As for the children of a prisoner or of a traveller,⁷⁵ if they marry before the three years elapse, and it is known that their father would not agree to this relationship, their marriage is not proper.⁷⁶ But if their father is without [the use of] reason, their grandfather's consent is sufficient, if he has the [use of] reason; otherwise let it be according to the advice of her family. If there is a dispute⁷⁷ with a woman who has attained majority, let it be [settled] according to the decision⁷⁸ of the judge. If the judge gives the

72. In other words: as the father, in his capacity as the lord of the family, receives presents for his daughter who is under his authority, he must give the same thing on behalf of his son, POEFNM 319-2. Arabic text: "What the father does towards his son, analogously, the guardian must do towards his ward" (1/241).

73. The prisoner may be either a father or a guardian.

74. Dig. XLIX, 15, 12.3.

75. ነጋዲ : "a traveller," in this case is one who travels far from his country to trade or for any other purpose; the Arabic text uses the term "absent" (2/242).

76. The NLF says: ግብዥቸው ሊይደሉም : "their marriage is not valid."

77. That is, if a dispute arises between a woman who has attained her majority and her family on the choice of her future spouse.

78. Here ሥጦረት : "consent, assent," as used in the text means "decision." In the NLF as well, one reads በዳኛ : ትእዛዝ : ደቡን : "let it be settled by the order of the judge."

same advice as her family did, but the man whom she chose herself is equal in appearance and in deeds⁷⁹ [to their choice], let it be done as she herself has chosen. If a dispute arises between an orphan girl's relatives and her guardian about her marriage, and she has not yet attained womanhood, the decision of the judge shall be followed. And the person who merely administers the property of the orphan has no power in regard to her marriage, either to prevent her from marrying or to give her a husband. Those who are in mourning for the death of their father or grandfather shall not be prevented from marrying during the time of their mourning.

Section V. Definition of marriage and matters concerning it:

It is divided into three parts.

First part. Definition of marriage:

This is the consent of man and woman, manifested before true witnesses and accompanied by the prayer of the priests, to be united, to live in harmony, to provide the means by which they may help each other in providing for their own needs, and to procreate offspring who will survive them.

Second part. The first item regarding marriage:

TS 4. The celebration of marriage shall not take place without the consent of both spouses and of their guardians. Those who marry must have attained the age of manhood and womanhood; the man must be twenty years old and the woman must be twelve years old. The woman who marries before this is not a wife according to the law, since she did not consent [with full knowledge]⁸⁰ to the union with the man. Those who arrange a marriage must also observe this term [of age] so that the marriage may be legal, suitable both for the man and for the woman. No wedding⁸¹ shall be performed secretly, without the gathering of many people, but all weddings shall be performed in public. MAG 1. Marriage does not take place and shall not be performed without the participation of priests and a prayer offered over the spouses; the Holy Eucharist shall be given them at the time of the wedding, by which both become united and become but one body, as Our Lord—to Him be glory—has said. In the absence of this form, one shall not consider them as [validly] married, since it is the prayer which hands over the woman to the man, and the man to the woman.⁸²

Third part. The section on marriage and what follows it:

There are eleven parts.

I. The first is dealt with in five parts: the first part deals with the first marriage⁸³ and has been dealt with in the first section.

The second part is about the second marriage. MAG 7. Men are permitted to marry a second time, without coronation.⁸⁴ If they have small children, they must

79. Or, as it is stated in NLF. በመልክ፣ በጥያ፣ በእጥግ፣ “[if they are equal] in beauty, in achievement and in lineage.”

80. She is not a wife according to the law, ዘሩን፣ ሳብታ፣ ካልተቀበለች፣ “if she does not receive the seed with desire,” NLF.

81. ተክሊል፣ as in the text, means “coronation,” from the verb ክሊል፣ “to crown.” Since both spouses are crowned at their wedding, ተክሊል፣ connotes wedding, nuptial ceremony, nuptial blessing. Coronation is reserved for those who marry for the first time.

82. Gloss: “[it is the prayer] which gives leave by saying: ‘Be you one.’”

83. Marriage between two virgins.

84. N. 81 *supra*.

ment inflicted upon the lewd for fornication,⁹² and shall be separated from one another.⁹³

Fifth part. NIQYA 27. A man shall not have two wives, for this pleasure and the contracting of many marriages serve to gratify concupiscence and not to beget offspring as God ordered. If one does this, he shall be prevented from receiving the Eucharist and from entering the church. He shall not enter the community of the faithful until he parts from the second [woman] and lives with the first only. 70. Whether he takes two wives [together] or he takes them separately, each one in her own house, or he keeps a wife and a concubine, he shall be deposed from his priesthood if he is a priest, and if he is a layman he shall be barred from associating with the people. ROME 9. "The woman who approaches another man, while her husband lives, is an adulteress and a transgressor of the law."⁹⁴

II. NIQYA 56; DESQ 31. If a Christian marries an unbelieving woman, he must command⁹⁵ her to embrace the faith; women who are believers must not marry men who are not of the faith, lest the men convert them to their faith and cause them to lose the [true] faith. NIQYA 72. If a Christian woman marries a non-Christian man, she shall be expelled from the community. If she repents and leaves him, she shall be accepted by the community as an apostate converted from her impiety. And after she becomes purified, she may stay together with the other faithful, and may receive the Eucharist. 73. As for a Christian who gives his daughter or sister away in marriage to an unbeliever, and that, too, against their will or when they do not know that the man is an unbeliever, he shall be expelled from the community and shall not be allowed to stay together with the faithful. But the daughter or the sister shall not be expelled. If he repents and separates her from the unbeliever, a penance proportionate to his capacity to support it shall be given to him and then he shall be forgiven. QORONTOS 7. "If there is any brother [in the faith] who has a wife who does not believe and she consents to dwell with him, let him not send her away. And if any believing woman has a non-believing husband, and he consents to dwell with her, she shall not separate from her husband, for the unbelieving husband is sanctified by the believing wife, just as the unbelieving wife is sanctified by the believing husband; but if the unbeliever wishes to separate, let them be separated."⁹⁶

III. The length of time during which one of the couple is not permitted to remarry after the death of the other. There are two opinions about this. The first is: MAG 7; TS 6. No one is allowed to [re-]marry before the lapse of one year from the death of his wife: if he marries before the lapse of one year, he shall be deprived of all the property left by his wife to which he was entitled. [The second is:] MAK 66, 78. If a woman marries a man before the lapse of ten months from the death of her husband, nothing shall be given to her from what he bequeathed to her. If he left her a legacy, she shall not take it. She shall not be honored like other, respectable women.

92. See Ch. XLVIII *infra*.

93. Concerning this punishment and the separation, the NLF refer to a second interpretation, that is, those born of the fourth marriage shall be punished and deprived of inheritance as children of adultery, and shall be separated from those born of lawful marriage, that is the preceding marriage.

94. Rom. 7, 3.

95. Arabic text: "A Christian may marry a non-Christian woman, provided that ..." (1/247).

96. I Cor. 7, 12 ff.

IV. TS 5. As for the woman, if after her marriage her husband becomes poor because he gave presents and dowry before [the marriage], and if she wants to take what she received from him,⁹⁷ she shall not be allowed to do so, but must maintain her husband and her children with her dowry.

V. TS 9. If a man pledges the property of his wife without her consent, taking [the pledge] is not allowed.⁹⁸ If the wife consents that her husband pledge her property, offering no objection, but later on brings an action against [her husband] by invoking the help of others,⁹⁹ she has no [right to such] help; the law helps a good woman and not an evil one.

VI. On the prohibition of divorcing a wife in the absence of a cause sufficient to annul a marriage.¹⁰⁰ This [prohibition] is in conformity with the Gospel according to Matthew, which bears witness by saying: "And there came to the Lord Jesus the Pharisees, tempting Him and saying: 'Is it right for a man to send away his wife for whatever cause?' He answered and said to them: 'Have you never read that from the beginning God created them male and female? And He said: 'For this cause shall a man leave his father and his mother and shall cleave to his wife, and they two shall be in one flesh. What God has joined together let not man put asunder.' 'Why then,' they said, 'did Moses command to give a bill of divorce and to send her away?,' He said to them: 'Moses, indeed, by reason of the hardness of your heart, has written to you to send away your wives, but from [the beginning of] the creation it was not so; and I say to you that whosoever sends away his wife, except it be for fornication, he makes her an adulteress; and the one who marries her who is sent away by her husband commits adultery.'"¹⁰¹ And the Apostle Paul has said in his turn: QORONTOS 7. "Let every man stay with his own wife and every woman stay with her own husband."¹⁰² And he also said: "And to those who are married, not I command them, but it is God's precept that the wife depart not [from her husband]; and if she wishes to depart, she must stay without husband or otherwise she must be reconciled to her husband. As for the man, he shall not send away his wife. 8. If thou, O man, art bound to thy wife, do not wish to be loosed from her."¹⁰³

VII. Prohibition against refusing [to give the conjugal debt owed to] each other. QORONTOS 7. "The man must give the love which is due to his wife from him, and the woman shall do the same with her husband. The wife has no power over her body, but the husband has power over her. By the same token the husband has no power over his own body, but the wife has power over him. None of you shall refuse to another the love which is due to him, except by mutual consent [for a time that you may give yourselves] to fasting and prayer. And then, when you have fulfilled this, return to your will again, lest Satan tempt you for want of your [mutual] love. I say this to you as one says to the weak, not as a strict commandment."¹⁰⁴

97. That is, to put it to her exclusive use.

98. Arabic text: "... the pledge is not valid" (1/248).

99. That is, the help of her relatives as well as the help of the judge.

100. Arabic text: "Prohibiting divorce for reasons other than those mentioned [in the section] on causes of annulment of marriages" (2/248). NLF also says: "Prohibiting divorce unless there are faults similar to those enumerated in the Chapter on annulment of marriage."

101. Mt. 19, 3 ff.

102. I Cor. 7, 3.

103. I Cor. 7, 10 ff.

104. I Cor. 7, 3 ff.

VIII. The days on which husband and wife are not permitted to have carnal union. It is said in the canons of the Kings that they forbade the marital union of parents whose son had been baptized, in the daytime or at night,¹⁰⁵ in honor of the Holy Ghost. BAS 11. Do not stain the holy days of fasting, and do not approach your wife on the days of her menstruation and childbed, lest your marriage become unlawful.¹⁰⁶ Remember what God has commanded you by the mouth of Moses, when He said: "Speak to the children of Israel and tell them: 'If any man approaches a woman in her menstruation they shall be destroyed and shall die without child, because they have not respected the pure seed when they have injected it into the blood of her menstruation and for these things it has been commanded that the man must die without child.'"¹⁰⁷ 30. Woe unto him who commits this sin during the Holy Week. 33. The marriage which God has ordained for mankind is not only for procreation, but also for desires which are not forbidden. God has established the times in which one must refrain from and the times in which one may fulfill his own pleasure; but it shall not be done with impurity.

The conjugal act in the days of menstruation and childbed of women is prohibited because the genital organ is spoiled thereby and because leprosy befalls the children conceived in the womb [during menstruation] as a consequence of this thing.

GLOSS XXI: It is in the canons of the Kings: sores and leprosy [befall them].

The prohibition [is imposed] on fasting days in order that one [may] fulfill the desire which must be obtained through fasting, which is the restraining of the animal soul from animal concupiscence, in honor of the rational soul, which is united with it in accordance with its spiritual nature. It is necessary that each one abstain in the days of the spoiling blood in order to safeguard his own body and his children. And in the Holy Week [one must abstain] because these are days of mourning, of fasting, and of abundant prayer, day and night. As for the other fasts, if there is one who is overcome by a fiery concupiscence against which he cannot fight, he has to extinguish it, and to take away the harm which it brings, at night-time, during which eating and drinking are permitted, except the night which precedes the day on which receiving the Eucharist is commanded.¹⁰⁸

IX. Prohibition against shedding the seed outside the uterus of the woman. This prohibition is based on the books and on reason. The first,¹⁰⁹ because the primary end of marriage is the leaving of offspring, as we explained clearly before. Taking a wife with [the intention to] deviate the seed or [to do] similar things becomes a deed in which what one seeks is not obtained. The one who would marry [with this in mind] must not take a wife. The second, MAK 15, because of the word of God who said in the Law that one who lies down with a woman and removes his seed from her shall not escape from death. TA 27. And when Onan the son of Judah (and this evil deed was intended to destroy those who exist)¹¹⁰ united with his brother's wife, he spilled [his] seed upon the ground as

105. Parents must not have carnal union on the baptism day of their child (2/249).

106. ባቢህ፡ ከግድብ፡ ሥርዓት፡ የወጣ፡ እንዲሆን፡ "lest thy marriage go against the precepts of the Book," NLF.

107. Lev. 20, 18.

108. The terms አጥፍላ፡ "to extinguish," and አላተተ፡ "to take away," mean in this case "to satisfy." As regards the "other" days of fasting, Fridays and Wednesdays are also included, as they are days of fasting almost throughout the year.

109. "The first" refers to "reason."

110. The sentence in parentheses was misplaced by the Ge'ez translator and is repeated a few lines later in its proper place.

the Book says; his deed was detestable before God, and He slew him.¹¹¹ And Chrysostom said in his explanation of the Gospel according to Matthew: They set about avoiding the natural fruit, and this is worse than destroying those who exist. And this evil is attained by giving the seed and sending it where it will not become seed, or by using poison in order to prevent conception."

X. On one who accuses his wife of depravity.¹¹² MAGH 105; TH 13. If a man among you marries a woman, has intercourse with her, and afterwards hates her without reason and says: "I have found her not to be a virgin"; and if her father rises and takes action [against him] and finds that the man accused her falsely, the man shall be reproached for his deed and punished for his sin. She shall be his wife, whether he is willing or would refuse her, and never shall he be separated from her until the death of one of them. But if what he charged her with is true, and her virginity is found lacking, and if her parents were not aware and her shame is known, they shall be separated; she shall be cursed, and shall not be married to another, but shall dwell in her house with sorrow and weeping, since she fornicated in her father's house and dishonored him.¹¹³

MAGH 47; TH 4. If a man who has been told by people that his wife has committed adultery knows not the truth about this and desires to know the truth about her deed, he shall bring her before the judge of God's Church and place her before the altar. The priest shall take an earthen vessel into which he shall pour bitter sulphurous water.¹¹⁴ He shall take [a little] earth from the corner of the altar, cast it into the water, and take [the vessel] into his hands. She shall unveil her head, and the priest shall make her take an oath in the power of the Holy Ark and the ever present Holy Ghost by saying: "Has a strange man committed adultery with you?" If she answers, "No," the priest shall say to her: "If you are pure of what your husband suspects, drink then this water and no evil shall harm you. But if you have been foolish and have sworn falsely, let the curse of God be upon you and may you be taken a slave far from your family; let this water you drink spoil all your body and dissolve all your members and let your body be dissolved forever." The woman shall say: "Amen, amen, amen." She shall drink that water before the altar of God, with her head unveiled and observed by her husband. If she is a liar, the water she drank will swell all her body, and she will become an example to everybody who looks upon her. But if she is innocent, no evil will befall her, and she will conceive and give birth to a male child of whom she will rejoice; God will make disappear from her husband the suspicion and the jealousy he had entertained against her.

XI. The knowledge of things which lead to an understanding of marriage. Based on this [knowledge], none must think that marriage is prohibited in itself and in its [essential] actions. RSTG 45. The one who abstains from marriage thinking

111. Gen. 38, 9-10.

112. The NLF puts it more clearly and reads: "The judgment of one who accuses [his wife], alleging that he did not find her in her virginity."

113. Deut. 22, 13 ff.

114. The textual term is ግደ፣ ክብርታዊት፣ "revered water" but some prefer ግደ፣ ክብሪታዊት፣ "sulphurous water." This recalls the so-called "trial of jealousy," as in Num. 5, 14 ff. The commentators seem undecided whether to use ክብርታዊት፣ or ክብሪታዊት፣. The interpretation of those who use ክብሪታዊት፣ is more logical and is the one followed here. The term ክብርታዊት፣ is derived from ክብርት፣ in reference to the legend that the Holy Virgin (ግርያም፣ ክብርት፣) drank of this bitter water; on the basis of that NLF says: ክብርታዊት፣ ለለ፣ ክብርት፣ ለጌታችን፣ ጠጥታለችና፣ "It says 'revered' since our Honored Lady has drunk it." The Arabic says "sulphurous" (1/252).

that it is impure is foolish, because everything God created is very good, since God created males and females for good and beauty. [The one who thus abstains then] shall be excluded from the church. But if he abstains to serve God and for the sake of purity, he may abstain. **GENER 1.** One who despises the law of true marriage, and says that contracting it is an impure thing which prevents one from entering the Kingdom of Heaven, shall be excommunicated. **14.** One who leaves his wife, and wishes her to leave him because he considers marriage as an impure thing, shall be excommunicated.

It is not allowed for a woman in menstruation or in childbirth or a midwife to enter the church during the times of which mention is made hereafter. **NIQYA 29.** A woman in menstruation shall not enter the church nor shall she receive the Eucharist until the days of her menstruation are over, even if she is the wife of the king. And if any priest transgresses this, he shall be deposed from his rank. **BADAS 18.** A woman who gave birth shall stay outside the holy place for forty days if the newborn is male; but if she gave birth to a female she shall stay outside for eighty days. The midwives shall not receive the [Holy] Mysteries until twenty days after the birth of males and forty days in the case of females. And the midwives shall also keep themselves apart from adulterous women.

BAS 13. As for the woman who has a husband, if she commits adultery but her husband is unaware thereof, only she must be punished. But if her husband is aware of it and refuses to drive her away, both shall be driven away from the church. **14.** And if he is a priest, he shall be deposed from his rank and prevented from [taking] the [Holy] Mysteries. If after deposition from his rank he does penance and drives away the woman, let him receive the [Holy] Mysteries; but he shall not be restored to his rank, since he has been the companion of an adulteress. **41.** If the wife of a priest marries another after the death of her husband, she must do penance since she has done a shameful thing and has debased his previous rank.¹¹⁵

Section VI. The marriage which may be dissolved:¹¹⁶

Marriage may be dissolved on three grounds:

First, if husband and wife choose a religious life [as monk and nun] by mutual consent.

The second is the will of one of the spouses, that is, if one refuses the partner the marital union, the performing of [carnal] union which is the end of marriage, for the reasons mentioned in Part 8 on the impediments to marriage.¹¹⁷ For, in this case, the first end of marriage, which is to have offspring, is not attained by such a marriage (in such a case the one shall refuse to the other the marital union),¹¹⁸ nor is the end which follows it, which is the removal of the burden of conspiscence in the way not prohibited by law.

In addition to the above, a lack of news for many years concerning one of the spouses, due to his imprisonment or some similar cause, [may constitute a further ground for dissolving the marriage].

115. As in NLF, the penance reserved to a priest's widow who remarries is to stay at the entrance of the church and to receive the Eucharist after the other faithful.

116. Arabic text: "Grounds for annulment of marriage."

117. See p. 137.

118. Unduly inserted (4/254).

The third concerns the marriage in which another end of it is not attained. This end is the mutual help that renders life less burdensome and more agreeable. This point is divided into three parts:

I. In reference to one of the spouses: if a man persists in adultery with a woman [known] before [or] after his marriage, [or] if he falls into sin with another woman, the marriage is dissolved.¹¹⁹

II. Adultery is not permitted, as demonstrated before. This is for two good reasons: first, [adultery is not permitted] because of the damage resulting to the lives of the married couple, because of lack of food, of mutual care, and of affection for their children; their lifelong concern and interest are constantly directed to that which is opposed to their good, and their property is granted to strangers.¹²⁰ Second, [adultery is forbidden] because of the man's uncertainty about his own offspring: one not born to him might be his heir and one born from an adulterous union might not be heir to his true father.¹²¹ [Adultery is forbidden] also lest the killing of one of the partners or indeed of the seducer be occasioned by jealousy, or lest the killing of the one who devises the marriage of one of the adulterers happen.¹²²

III. [If there is] damage to the life of one of the couple by the other, and their quarrel results in bitter violence involving enmity¹²³ [the marriage is dissolved]. For these three cases three canons have been established; the first is this: TS 11. The marriage is dissolved if husband and wife become monks by mutual agreement. Second, the marriage is dissolved because of difficulty, that is, if the husband is unable to perform carnal union with his wife and to do that which is proper to his nature. He shall stay [with her], however, until three years after the [attempted] carnal union, and if he is still completely incapable of accomplishing what he desires, then the wife and her relatives are permitted to dissolve their union. If it is the woman who does not want to dwell with him, she shall give the man her dowry, if he desires to retake it from her.¹²⁴ The presents given before marriage shall remain with the man,¹²⁵ who shall not give anything on his part.

119. For this ill-constructed passage, one of the interpretations of the NLF is adhered to here.

120. To the respective lover.

121. According to the NLF, אֲבִיָּהּ: "to this" refers to אֲבִיָּהּ: מְאִלְטָה: "to his true father."

122. The counterpart of this passage in the Arabic text reads: "It is of three kinds: the first and most important is adultery when it is proved in the case of the woman; if adultery is committed by the man, there is a difference of opinion. The second is what generally involves adultery as we will explain. In the two above mentioned cases [the marriage is dissolved] because the conjugal cohabitation goes to ruin, the one partner not offering to the other and to the children the care which one who must stay united for all his life would offer; and because the maintenance [due to the family] is diverted and given to strangers; and because the man does not know who is his true offspring and because one who is not his child might inherit his property, and this child born from adultery might not inherit the property of the one who truly begot him; and because one of the couple or the seducer might be killed out of jealousy or so that one of the adulterers may possess the other fully [after having killed the lawful consort], by marriage with him or without doing so" (2/255).

123. By מְאִלְטָה: "rebellion" is meant enmity between the families of the couple. The gloss in the NLM says אֲבִיָּהּ: מְאִלְטָה: קָאֵל: מְאִלְטָה: מְאִלְטָה: "since enmity grave enough to cause local disturbance follows, [the marriage is dissolved]."

124. Arabic text: "In such a case the wedding outfit follows the woman, and if the man has taken it he shall give it to her" (3/256).

125. According to the gloss and the NLF this "man" is the father of the woman. The Arabic text says that the "man" must give back the presents (4/256).

MAG 4. If a man who married a woman found her wanting in feminine nature—of a structure different from a woman's nature and not suitable for a man—and if he has made this known on the first day of his contact with her, or on the second or third day, and acquainted the priest with her case, he is free from any responsibility. When the facts are well ascertained, the bishop must separate them, dissolve their marriage, and give permission to the man to marry again. The woman shall be reproached and forbidden to marry. So also, her master¹²⁶ shall be reproached, excluded from the Eucharist, and forbidden to enter the church for many days. But if the husband was aware of and kept her condition hidden and dared to do a shameful thing [by attempting to unite with her] for many days, and then her condition is known, he shall be reproached. If he is one of those who are chaste and follow the way of purity, he shall not be permitted to marry; but if he is one who, it is feared, may commit shameful acts worse than what he has performed, let him be married.

If one of the couple is thrown to earth by the devil, two opinions are held regarding him.

The first is [in] **MAG 5.** If a husband finds his wife thrown to earth by the devil, where this is a new thing after her marriage with him and she has cohabited with him for a long time, he must bear with her and have patience; if a similar thing befell him, she ought to bear with him and have patience, and never should she be permitted to marry another. But if she suffered from this thing while she was betrothed, before marrying him, her condition was kept secret from the man, and he was unaware thereof, if he wishes to be rid of her let his marriage be dissolved and let him marry another woman. The dowry, the outfit and whatever she brought to him from her father's house shall belong to her. If she has brought with her beasts, let her also take the price. For those which are dead he has no responsibility. And of the calves born to these beasts, all the profit made from them and from their wool, and all the children of the men and women slaves, half shall go to her and the other half to her husband; this is in case he wishes to divorce her. If there is a man who has a dispute with his wife arising out of these things, if he has consumed something from her outfit, she shall take in compensation the equivalent value. But in case he has made some donation from his property in her favor, he shall not give it to her, but it shall belong to him.

The second [opinion] is in **MAK 74.** If the sickness which makes her fall has come upon her after she married him, and if he wishes to divorce her, she shall take the dowry and the outfit; but if this sickness has come upon her before he married her and he was not aware of it, if he wants to be separated from her, he shall give her all the outfit. And what he ascribed to her from his property shall belong to him.

If leprosy befalls one of the couple, there are two opinions. First, **MAG 8.** If the leprosy befalls one of them after their marriage and one of them wills to separate from the other, he may not do so. Second, **MAK 23.** This [opinion] is more just. If one marries a woman and after the marriage a sickness, like sores or leprosy, comes upon her, if he wishes to separate from her, he must give her the full outfit and the dowry; but if he does not wish to separate from her, he may let her live [with him] on the condition that he provide her with food at his own expense, according to his means, since what befell her was not by her or his will.

126. The one who has authority over her, such as her father, guardian, etc.

TS 11. We order the dissolution of the marriage of one who is in jail, but until one knows [whether he will be released or not] the man and the woman shall remain [husband and wife];¹²⁷ we order that the union be kept intact until its accomplishment.¹²⁸ There shall not be another marriage either for women or for men,¹²⁹ and if they dare [to violate this rule], they shall be punished. The man shall be deprived of the presents given prior to the marriage and the woman shall be deprived of the dowry and the wedding outfit.

In case it is not known whether a man is living in the hands of the enemy or not, then the man or the woman shall wait five years. After this period of time, if his death is ascertained or if he is absent or if he has disappeared [into distant lands], marriage is permitted without any hesitation. It is evident that marriage is permitted [after waiting five years] even if [ransom for his release] has been given, but he does not come.¹³⁰

If the man is among the soldiers of the king, we order that one wait for the two years that the expedition lasts, that wives wait even when they receive no letter or news from their husbands. If one of them receives news that her husband is dead, we must not permit her to marry unless she herself or her parents or others¹³¹ ask and ascertain the truth of the news from the chiefs in whose service her husband was employed. If he is dead, the Gospel shall be put before them in the presence of witnesses. And after the certainty [of his death] is confirmed, let the woman have a document of permission in which the witnesses are mentioned. Then she shall wait for one more year after which she may contract a legal marriage. If she dares to transgress this, she and the one who marries her shall be punished with the punishment meted out to fornicators. Those who testified that her husband was dead, if they gave false evidence, shall be deposed from their rank and shall pay ten pounds of gold, to be given to the person as to whose death they falsely testified. Then, that man may do what he likes; if he wishes that she return to him, he may take his wife [back].

[This] third part is further subdivided into three sections. The first deals with adultery committed by a woman. TS 11. If the man knows that he can produce reliable testimony against his wife to the effect that she committed adultery, he must first produce the witnesses and then he may divorce her. The man shall take double her dowry with the presents given before marriage; if he has no children, he shall take the third part of his wife's outfit from her property; if he has children from her, the outfit and the rest of her property shall be kept for her children. And when the fact of adultery is discovered in her, he¹³² and she shall be punished together. As for the adulterer who has sinned with a man's wife, the value of the

127. As laid down by the gloss and the NLF, the fate of the prisoner must be known within five years.

128. That is, until the expiration of five years, during which one will know whether the prisoner will be released or not. The gloss says: "We do not order that they remain united until death"; this means that if the prisoner does not return within five years, the partner is released from the marriage bond.

129. During the uncertain period of the partner's imprisonment.

130. The translation of this passage adheres to the NLF. The gloss reads: "If they cannot find him, having paid the ransom for his release, and if he remains lost, marriage is permitted after five years."

131. The parents of her husband.

132. As in the Arabic text (4/260) this "he" is the adulterer; but according to the common interpretation, as in the NLF, it is the husband who, after the dissolution of a marriage because of adultery, becomes "the lover of his divorced wife," (فانفك من زوجته).

outfit which the woman's father¹³³ gave her before, at the time of marriage, shall be taken from him.¹³⁴ If the adulterer has a wife, she shall take her dowry with the presents given to her before marriage. If there are children, the wife shall have only the use thereof,¹³⁵ and the property shall be preserved for their children; the profits [derived from the dowry and the presents] which are in the man's possession, after the fact of adultery, we order to be given to the children. As for the presents given before the marriage, we order that they be assigned to the woman if there are no children, and what remains of the property shall be in common.¹³⁶

The second [section] deals with what must be done with an adulteress. TS 11. This is a woman who drinks against the advice of her husband¹³⁷ with another man, or bathes or jokes or goes to a hunting place¹³⁸ or to a gathering while her husband is absent,¹³⁹ or who passes the night out of her home in another house. [All these acts are sufficient grounds to dissolve the marriage], unless the woman passed the night in her father's house; unless because she had no father, she had to pass the night in someone else's house; or unless the fact is in harmony with the dispositions on prohibited marriage made in the previous sections,¹⁴⁰ RSTA 14, except the fifth and sixth.¹⁴¹ And there are a number of other canons besides those mentioned; they are RSTA 16; QATAG 2; BAS 25, 44. As for the rest, the provisions laid down above [as regards the woman] shall apply to the man when something against him is known,¹⁴² since the law applies to both [the man and the woman] equally.

The third [section] deals with the case in which one of the couple schemes against the life of the other, and in which the man devises against the purity of his wife.¹⁴³ TS 11. If the woman plans to harm the life of her husband in any way, or if she knows that others are planning the same thing and does not bring this to his knowledge, [the marriage may be dissolved]. NIQYA 55. If one marries a woman, and between him and her there is enmity or some other cause, and if the one who offended is the woman, the man shall be patient with her and be merciful to her until she repents of her [evil ways] and returns to the good. If the husband cannot do this, and her evil deeds against him increase, he shall bring her to the senior priest, who shall be the peacemaker between them. If she refuses him, the bishop shall judge between them. If she does not obey even the

133. Following the gloss and the NLF.
134. That is, the adulterer shall pay as fine, to the husband of his accomplice, the value of the outfit given to her by her father.
135. The gloss in NLM says: ትጠብቅው : "she shall keep it."
136. Gloss: "the profit shall be divided between husband and wife."
137. "Without the permission of her husband," NLF.
138. As in the NLF, it may also be taken figuratively, that is, "...a place where the devil lays snares to involve people in sin" (ኢየሱስ ገላሌ 5: 30 ፡ ወደ ግሪማቶ ደብት ።)
139. "Against the will of her husband," NLF.
140. The NLF says: "... she shall be divorced, unless she passed the night with relatives with whom marriage is prohibited, and these are the relatives of the second and third degree and the relatives by law and by dwelling, as provided in the previous sections on prohibited marriage."
141. Arabic text: "The marriage prohibited in the first fourteen paragraphs of RSTA, except paragraphs 5 and 6" (6/261).
142. Arabic text: "As for whatever has not been expressly stipulated, one will act analogously to what has been said, for it is similar to it" (8/261). At this point, the NLF introduces an interpretation which runs: "When it is proved against the man, it shall be imputed to the woman without judgment."
143. That is, when he entices his wife to debauchery.

bishop, and flees far from her husband, the bishop shall bring her back. If she persists and does not listen to his voice and will not enter [her home], the bishop shall shake his shoes and [leave] the dust of his feet at her door. Her husband is permitted to do what he likes. If he wants to marry [another woman], let him marry. If he desires to remain in his condition¹⁴⁴ and has patience, let him remain in that condition. If he is a good man, let him be a monk. But if it is known from the behavior of the man that the unjust one and the enemy of the woman is himself, and he desires to create enmity toward her so as to be rid of her, no one shall excuse him; he shall be compelled to live together with her. If he refuses and wants to leave his home, he shall be excluded from the Eucharist and forbidden to enter the church.

GLOSS XXII: This is not commanded in our church; but is written only to make it known.

TS 11. The obvious reasons which permit the woman to leave the house of her husband or similar things [are]: if the husband schemes against the life of the wife in any manner; or if others so plot against her and he knows it and does not make her aware of it; or if he schemes against her purity and gives her to one who sins with her. If there are witnesses against him [to prove] that he incited her to adultery, but did not succeed, certainly this is reason enough for her to leave him and to take her outfit; the presents given her before marriage shall be awarded to her.

GLOSS XXIII: His punishment shall not be limited to this only. The woman shall also take something from his remaining property. If she has no children, she [shall take] one third of the presents given her before marriage, but if she has children from him, we order that all his property be preserved for their children, as well as the remaining property and the presents given before the marriage which we ordered [above] in favor [of the woman].

GLOSS XXIV: It is right that the punishment for the adultery of the woman be greater than that of the man. This is so established because the adultery of the man is such that it is not necessary for the woman to be separated from him since the main aim of the law is to remove the difficulties which come upon men in their relationships. Also, man especially is so moved by jealousy as to kill his wife if she commits adultery against him, or to kill also the man who has committed adultery with her; and he does this also to her father or her brother or her mother, while the woman and her relatives are not like this. And [it is right that the punishment for the adultery of woman be greater than that of man] because the lineage is maintained if the woman leads an honest life. If she commits adultery, the descent and the paternal lineage is corrupted. Also, the virgin spoils the form of her virginity by adultery, while for a man this is not so. And in other laws there are provisions of punishment for a man who accuses his wife of shameful things and cannot prove it through witnesses; to such a man the same punishment which he had in mind to inflict upon her if she were convicted is to be his.¹⁴⁵ And if a man is found with another woman in the home in which he dwells with his wife; or if a man is united in the city with another woman

144. Gloss: "in purity."

145. In this passage the interpretation of the NLF is followed.

and has been reproached¹⁴⁶ for having been with her several times, and this charge has been made by the mouth of his parents or by the parents of his wife or by the mouth of other reliable witnesses, and if he persists in lying, let the marriage be dissolved. She shall take the outfit which she brought and the presents previous to marriage and let her take also the third part of the property of the man. In case she has children from him, the woman shall do thus: she shall take what she can get hold of from the presents [given] prior to marriage and the third part of the property of the man who has been reproached, and that owned by him shall be preserved for their children. If she has no children, we order that the ownership of this property belong to her. And about the separation of the man from his wife there is another appropriate canon, and let one do according to it. MAG 24. As for adulterers, they shall not be separated from their wives, nor shall one who accuses his wife without convicting her, because these are charges which are true but not susceptible of being proved. And those who have power to forgive the sin¹⁴⁷ must give punishment for these and similar things as penance, but they must not separate the wife from her husband.¹⁴⁸

146. Gloss: "if he has been accused of"

147. The spiritual chiefs.

148. The provisions on the dissolution of marriage contained in this section apparently are based on those laid down by the Emperor Justinian (483-565) in some of his *Novellae*, particularly in Nov. 117. The causes of dissolution of marriage according to Justinian's *Novellae* may be summarized as follows; 1) Choice of religious life as monk or nun; 2) Prolonged living of the couple in separation; 3) Incurable impotence; 4) Frequent adultery of the husband with another woman; 5) Adultery on the part of the wife; 6) The husband's false accusation of adultery against the wife; 7) The husband's enticement of the wife to debauchery; 8) Plotting on the part of one spouse against the life of the Emperor; 9) Plotting against the life of the other spouse; 10) Prolonged captivity in war, Nov. 22; 11) Madness of one spouse. It is easily noticeable that almost all of these cases are present in this section.

CHAPTER XXV

PROHIBITION OF CONCUBINES: CONCUBINE AND WOMAN WITH MARRIAGE BOND

Having a concubine is forbidden in our saintly law, since it is contrary to lawful marriage as clearly explained before. It is continuous fornication. RSTB 64. If there is one who has a concubine who is his slave, he must abstain and marry according to the law; if she is a free woman, let him marry her according to the law. If he refuses to do this, let him be expelled. TS 4. No man shall be permitted to live with a concubine in his house, nor is there any difference between him and fornicators. If he wishes to live with her, he must marry her according to the requirements of a lawful marriage. If he deems her not worthy to be called his legal wife, he must send her away; instead of her let him take a woman he likes. If he prefers, let him remain in purity. 39. One who has a wife and has illicit relations with his woman slave¹ shall be punished; the governor must sell her in some other far country. RSTB 29, 64. As for the unbeliever concubine of an unbeliever, if she is his slave and is not contaminated with others and has brought up her children let her enter;² but if she is contaminated with others she must be expelled. BAS 7. It is not right for a man to have a concubine from this time on, since Our Lord Jesus Christ has established a law of freedom.³ If you say that David, Solomon, and others had concubines, and if you want to know the reason, listen: it is because men were scarce⁴ at that time on the earth. It has therefore been permitted to them to marry and have concubines, so that men might multiply on the earth. And when the Lord saw that the earth was full,⁵ [His] law forbade taking concubines, and the Lord established the law of marriage.

1. Literally, "and marries his woman slave," but in this case it has the above sense, NLF.
2. Gloss: "let her receive the Eucharist." Alternative interpretation: "let her be baptized." The NLF give the following four interpretations: 1) ወዕትብቱ ፡ በእግራዊነት ፡ ለአዲሱ ፡ ተጠቅጦት ፡ "the unbeliever concubine of the unbeliever ... let her be baptized." 2) ወዕትብቱ ፡ በእግራዊነት ፡ ለአዲሱ ፡ ተጠቅጦት ፡ "the unbeliever concubine of the believer ... let her be baptized." 3) ወዕትብቱ ፡ ግራዊነት ፡ ለአዲሱ ፡ ተጠቅጦት ፡ "the believer concubine of the unbeliever ... let her receive the Eucharist [since she is constrained to accept the status of concubine]." 4) ወዕትብቱ ፡ ግራዊነት ፡ ለአዲሱ ፡ ተጠቅጦት ፡ "the believer concubine of the believer ... let her receive the Eucharist." However, the general opinion is that such a concubine shall be permitted only to receive baptism if she is an unbeliever, while she must be barred from the Holy Mysteries because of the lack of lawful union.
3. Gloss: "a law that releases people from the devil's rule."
4. Gloss: "[deficient in] intelligence."
5. Gloss: "bestowed with intelligence."

CHAPTER XXVI

DONATION

The greater part [of this chapter] is extracted from the book TS, paragraphs 12 and 13 on donations.

Donation is composed of five elements, which are: the [act of] donation, the donor, the donee, the thing donated, and other prescriptions.

A donation is made in favor of those who are not fit to receive alms, and alms go to those who are fit to receive them.¹ Making a donation is an act of virtue; a donation must be given after the granting of alms.² And since the donor has donated and the donee has received the thing which is donated, the donee has power over it, and may dispose of it like the donor.³

As for the donor, his donation is not valid if he has not attained majority and is not wise,⁴ free or distinguished, or has fear of the donee. If he has fear of the donee, the donation is not valid. If the donor dies, the donee shall not draw back, either in secret or in public, from taking the donation with acceptable witnesses.⁵ The donor may make the donation, if he wishes, during his lifetime, without fixing the time.⁶ If he wishes [the donation to be given] at a determined time after his death, as by will, he must make, at his death, [the will] which will have effect after his death.⁷ If he gives away all his property or the greater part of it at a time when he has no children, and begets children sometime later, he is permitted to recover his property [and give it] to whom he wishes. In this matter, whatever he has given away, be it money that is still at hand or the equivalent of the thing donated, he may dispose of as he sees fit.

After the death of either the donor or the donee, there shall be restitution neither of the donation nor of its equivalent, should it be no longer available, nor of what the donor may have received [from the donee] as compensation for the thing he has given, unless an agreement was made between the two. Nor may

1. The purpose is to show the distinction between a donation and alms. Though both are acts of generosity, donations are made to non-poor while alms are given to the poor.
2. Gloss: "lower." The sense is that making a donation is commendable, but, as the gloss indicates, it is less valuable than giving alms. ብይደሉ፡ ውሂቦታ፡ ለምድገረ፡ ምጽዋት፡ "it must be given after the granting of alms," means that donation, as a good work, ranks lower than giving alms.
3. Arabic text: "without the donor" (3/266), that is without asking the authorization or consent of the donor.
4. ግለሰብ፡ "learned, intelligent, prudent, wise," in this case denotes one who is in full possession of his mental faculties.
5. Arabic text: "If the donor has fear of the donee, the donation shall not have effect unless the former dies without revoking it, either in public or privately in the presence of acceptable witnesses" (7/266).
6. The gloss in NLM reads ረገፍ፡ "[if one intends to make a donation, it is better that he makes it] soon."
7. Arabic text: "The donor may make a non-conditional donation during his lifetime [and hand over the thing donated] or, if he wishes, he may stipulate that the donation will be made sometime in the future. He may also stipulate that the donation will be effective after his death" (2/267).

restitution take place when damage to the donee may occur at the time of restitution, as, for example, when the donor donated a house and the donee constructed a wall; in this case, the latter shall return not the house, but the price of the house.

And if one who has not attained majority made a donation to anyone, he must confirm it within four years after attaining his majority, or take back whatever he donated if he so desires. **MAK 19.** A donation made in writing⁸ is not conclusive until the donor transfers the written deed to the donee. If it is in favor of one who is not one of his relatives, the donor cannot claim it from him after transferring it to him.⁹ If the donation is in favor of his son or the son of his son, it remains valid without the written deed. He may revoke it while he lives, and change what he wrote in their favor as he desires. But after his death, whatever is in the written deed belongs to them, even if he did not transfer the deed to them.

As for those to whom donation is made, first of all come children, then parents, relatives, sons-in-law, tutors, friends, servants, faithful neighbors, then companions and similar persons. There must be equality to the one who should be treated equally, as is the case with children. But [there may be] one among them who was not grateful to the donor, but ran after wickedness, raised his hand against the donor, unjustly or with malice and fraud, caused a grave loss by accusing him in order to take his property, did something to endanger the donor's life, or failed to fulfill any of the conditions binding him in their agreement, made before witnesses, regarding whatever the donor has given to him. When it is openly known in the court and is ascertained that the donee has committed one of these acts,¹⁰ the donor can revoke his donation and take back unchanged the thing he donated if it is at hand, or its price, if it is not available. If they do not agree on the price, the word of the donor shall be accepted unless evidence which impeaches it is put forth. If the [unworthy] donee states that he is poor,¹¹ this does not hinder the action against him, unless there is [other] evidence which annuls it.

The donation has no value unless made to one who has property. It is not perfected until it is received.¹² The thing to be donated must not be unknown,¹³ nor such that the donor does not have full ownership of it. And let not the donation be either a thing which, the donor is convinced in conscience, will develop cupidity in the heart of the donee, or a thing which will do the donee harm, such as a sword donated to one possessed by the devil: it may happen that he will kill himself or others with it.

8. Gloss: "in case a written document is required by custom."

9. The donation made in writing and transferred to the donee meets all the essential formalities required for legal perfection. Consequently, it cannot be revoked by the donor. Roman law of the post-classical period also required, for solemnization, a written deed and *traditio* whereby donation became legally perfect, or a *donatio perfecta* not subject to *revocatio*. Similarly, the exceptions admitted by Roman Law, even where the donation is *perfecta*, are mentioned in this chapter, such as the case where the donor begets children after the donation (see above), and the case of the ingratitude of the donee. Inst. II, 7, 2; Cod. VIII, 55 (56), 8 and 10.

10. These are the cases of unworthiness which permit the donor to revoke the donation.

11. Gloss: "while in fact he is not."

12. This merely repeats that donation is not only an act of transferring something to someone, but is also an act made with the intention of giving to someone who is not poor. It also restates that the donation is perfect when it is performed by a bilateral act, that is, the act of the donor who makes the donation and the act of the donee who accepts it.

13. Gloss: "[it shall not be a thing which is unknown] to the donor," that is, the thing must be in the actual possession of the donor, and not something which is indeterminate or something he will possess in the future.

If the amount of money donated is not known at the moment of its passing, as are gold or silver coins, a written deed is not necessary. But if it is known, a deed shall be drawn. There must be the writing of witnesses who mention in it the amount of the money which is donated, its quality, and the detailed conditions made to the donor relating to the donation. The donor shall write therein, stating that he will not revoke the donation.

If the thing donated is a field, the grain reaped from it belongs to the donee from the time the deed was drawn up in his favor and he took possession thereof, unless it was provided otherwise in the deed. If the thing donated was only the grain which is in the field, he shall not have the field, but shall be deprived of the whole donation.¹⁴ If the donee accepts the [field] given to him, the thing remains thus.¹⁵ As for other conditions, no condition which conflicts with the perfection of donation shall be laid down.

If one makes a donation to another and the latter dies before he receives it, his heirs cannot take it.¹⁶ If one who is under a tutorese makes a donation with the authorization of his father, or of his own free will,¹⁷ that donation must be considered as one made by the father.¹⁸ If one donates something to someone on behalf of the donor, the owner of the object is the actual donor.

14. POEFNM 354-1 explains that the donee is allowed to harvest the corn and take it away but that he may not have the whole, that is both the field and the corn.
15. According to the POEFNM 354-1 ብር : "thing," stands for "grain" and the passage is understood to mean: "If the donee accepts the field given to him, the grain therein also, belongs to him."
16. This shows the personal character of donations.
17. Arabic text: "with the command or consent of his father" (3/271).
18. Gloss: "one says: 'the father gave.'" This is the principle found in Roman Law whereby the son may make a donation *permissente patre*, by the permission of his father, Dig IX, 2, 6, and the pupil may do the same *tutore auctore*, by the act of his tutor, Dig. XXVII, 1, 2.

CHAPTER XXVII

LOAN, PLEDGE, GUARANTY, AND ADMINISTRATION¹

Loan is a giving similar to alms, in that it is commanded by the Lord. He forbade refusing to give it, as said in the Gospel: "Lend and do not frustrate the hope of anybody."² He also said: "If a man would borrow from thee, do not refuse him."³ To be eager to repay the debt is commendable, and to repay it on time, if possible, is in accordance with the law.⁴ As the prophet David said: "The sinner borrows and never repays, but the good man has mercy and gives."⁵ The lender must wait patiently until the borrower is able to pay him, since the Lord has said: "Do not search for one who borrowed money, and do not compel him [to pay while he is oppressed] by the force of his poverty."⁶ In connection with this Our Lord has told the parable of the servant who compelled his debtor [to pay].

Loan may be upon pledge, guaranty of debt, guaranty of person,⁷ or upon a written deed attested by witnesses.⁸ The handwriting of the borrower on the written deed or solely the trust put in him may be sufficient,⁹ but it is preferable that there be witnesses who attest the written deed. Loan may be immediate or for a future time, and repayment of the loan must be made at its proper time, when the lender requests it, or if possible earlier — before it is requested. The repayment shall consist of an object of the same type as was borrowed, or its price at the time of repayment, whichever of the two the debtor prefers: an object of the same kind as was borrowed or another thing, the value of which is proportioned to the loan at the time of repayment.¹⁰ If special conditions were laid down regarding repayment, they must be observed.

If the debtor says, "I am not able to pay the debt," the creditor may take any belonging of the debtor, pursuant to the order of the judge and the opinion and calculation of reliable persons, whether or not the debtor agrees. In case the

1. Gloss: "magistrates, or the maintenance of the beasts given as pledge," but see n. 36, *infra*.
2. Lk. 6, 35.
3. Mt. 5, 42.
4. Gloss: "who borrows and does not repay is a sinner: one must repay on time."
5. Ps. 36, 21.
6. Mt. 18, 28. Arabic text: "It is forbidden to compel someone to pay while he is poor" (4/272).
7. These are the real and personal sureties. Pledge, *pignus*, is the only type of real surety dealt with here; there is no mention of *hypotheca*, another real surety in Roman Law. This may be in conformity with the assumption that there is no difference between *pignus* and *hypotheca*. *Inter pignus autem hypothecam tantum nominis sonus differt.* (Dig. XX, 1,5,1). ትሕቢት translated here as "guarantee of debt" and ጭደገገ translated as "guaranty of person," are personal sureties. Although both have the function of security, they mean different things, as will be explained *infra* at n. 42.
8. This is the so-called *obligatio littoris*, Inst. III, 13,2; III, 21.
9. This is certainly a reference to the *pactum fiduciae*, Gai. II, 59-60.
10. The Arabic text says that the restitution may take place either by returning the borrowed object, or the price it fetches at the time of restitution, or another thing which has, at the time of restitution, the value which the borrowed object would have at the same time (1/273). The terms ለጥንቅቅ፡ልቃሕ፡ "an object of the same type as was borrowed," and ለጥተለቅሕ፡ "of the same kind as was borrowed," are then equivalent to the expressions *idem genus*, Dig. XII, 1,2. pr.; *eadem bonitate*, Dig. XII, 1,3, etc.

borrower denies having incurred the debt, and the instrument he endorsed is introduced to contradict him, no calculation shall be made in his favor,¹¹ but all his possessions shall be taken from him. And one who denies his creditor that in which he is indebted and swears to it, but witnesses prove him false, shall pay double the amount. But if after the denial, he admits it at the moment of taking the oath, he shall be exonerated from paying double.

As for the loan upon pledge, if the pledge yields profit or fruit, whatever benefit derived from the pledge goes to the hand of the lender must be credited to the borrower's account and offset the debt to that extent.¹² As for usury, we have to avoid it, since the Divine Law has forbidden it.¹³ If the lender takes any object in any way [from the borrower] it is considered partial repayment of the loan.¹⁴ When the creditor is paid by the debtor,¹⁵ the creditor must return the pledge to its owner.

The creditor must return the extra amount to the debtor, if the latter pays him more than what he owes him. A claim shall be made by the debtor for anything that is found missing from the profit or the price of the fruit [of the pledge].

The one who takes a pledge must care for the pledge as he does for his own property.¹⁶ If he loses it he shall not [be required to] pay if he produces witnesses who testify that he did not lose it [by fault];¹⁷ otherwise, he must pay for or replace the pledge with another of value equal to what he has lost. If lender and borrower have made an agreement¹⁸ contemplating the possibility that the pledge will be lost by the lender before the debt is restored, the judge shall decide pursuant to the agreement they made.¹⁹ The parties' claims cancel each other if the pledge was lost [due to the creditor's fault] and if it was of the same value as the amount of the credit. The creditor who had the pledge shall give [his debtor] the extra amount, if the value of the [lost] pledge exceeded the amount of the credit. But if the value of the pledge was less, the debtor shall pay the remainder of the loan in due time. The lender²⁰ may claim what he has spent for [the

11. That is, he shall not enjoy the benefit of gradual payment, paying some portion of the debt immediately and the rest by installment (3/273).
12. Cod. IV, 24, 1-3; VIII, 24, 2; Dig. XXXVI, 4,5.21.
13. Gloss and NLF: "If you say that this is interest, the answer is that this interest is forbidden since it is usury."
14. The interpretation in NLF runs: "If one (the lender) receives from another (the borrower) any object for any reason, even as an act of gratefulness, it is considered as part of the repayment of the loan."
15. Arabic text: "If the profit from the pledge pays off the whole loan ..." (3/274). That is, if the profit from the pledge equals the loan, the creditor must return the pledge.
16. Inst. III, 14,3.
17. Arabic text: "... that there was no negligence on his part" (4/274).
18. Gloss: "If I pay you within a specified time, it is settled; but if I do not, be owner of the pledge you have."
19. Arabic text: "If they earlier agreed on the condition that, in case of loss, the one who took the pledge will or will not be responsible, the agreement shall be adhered to" (5/274). According to the POEFNM 356-3, the above passage, read in connection with the passages that follow, is taken to mean: "If the lender, through his negligence, loses the pledge before the debt is restored, the judge, pursuant to the established rule, shall give one of the following three decisions: i) the parties' claims cancel each other if the value of the pledge equaled the amount of the credit; ii) the creditor shall give the extra amount, should the value of pledge exceed the amount of the debt; iii) if the value of the pledge was less than the amount of the debt, the debtor shall pay the difference."
20. Reading ወለላጅሁ : "lender," instead of ወለላጅሁ : borrower," POEFNM 357-1.

maintenance of] the pledge [from the borrower].²¹ If an agreement was made to the effect that after the expiration of the period set for payment, the pledge will be sold [if the debt has not been paid],²² let it be so; but the one who took the pledge must not sell it for a price lower than its actual value, nor shall he exchange it [for other goods] without the order of the judge. If he sells it independently of the advice of others for a lower price [than its true value], the difference shall be claimed; the estimation of the value shall be fixed according to the testimony of the borrower,²³ supported by an oath. The pledge which is with the lender or with his heir shall be given back to its owner when the latter repays what he has borrowed, except in those cases where there was an agreement between them, whereby the lender might take possession of the pledge instead of claiming his credit, provided that the time for payment has elapsed [without payment] and the value of the pledge equals the loan.

If a part of the pledge dies, or if, [in case the pledge is a slave], the one who has given him as pledge²⁴ manumits him, or if the debtor gives the pledge away as alms or as a charitable legacy, he shall pay its price, instead of it, or discharge the debt. If the borrower is so poor that he could neither pay for manumission [nor give] alms or a charitable legacy before he has paid the debt,²⁵ he cannot dispose of the pledge in such a way that the benefits due to the lender at the time of payment are destroyed, as might happen if the debtor sells or donates it. Nor may he dispose of it in such a way that the value of the pledge depreciates, as, for instance, if he demolishes a wall [where the pledge is a house]. But the borrower may utilize the pledge in a manner that does not entail any damage to it, such as enjoying its products, using the young of the animals, or drawing rent provided that the duration of the lease is less than the duration of the debt, unless it was agreed otherwise. No one can give as pledge what cannot be sold,²⁶ as for instance a slave who is already manumitted, a house previously given as a charitable legacy, or something that will perish before the date of payment. If a dispute arises because of [an alleged] substitution [of something else] for the pledge,²⁷ let the dispute be settled according to the testimony, supported by oath, of the one who had the pledge.²⁸ If the latter only alleges that he has given the true pledge back to its owner, his statement shall not be accepted. Neither the whole nor the parts²⁹ shall leave the hands of the one who took the pledge if its value increases after it has been taken as pledge.

The pledge shall remain in the hands of the creditor, or in the hands of a trusted person if there was such an agreement between the two parties. The rights of the lender, the borrower, and the trusted person over the pledge shall be accor-

21. If, for instance, the pledge consists of a slave, Dig. XIII, 7,8.pr.
22. *Pactum de distrahendo pignore*, Dig. XIII, 7,4.
23. Following the gloss, which puts $\text{†}\text{A}\text{‡}\text{A}$: "borrower."
24. In the text $\text{A}\text{‡}\text{A}$: literally, "pledgee"; but it is taken to mean "pledgor" ($\text{A}\text{‡}\text{A}$) POEFNM 357-3.
25. Arabic text: "If he is poor, he will not be credited with the manumission ... until he has paid the debt. Also, he may not dispose of ..." (2/276).
26. Cf. Dig. XX, 1,9.1: *Quod emptionem venditionemque recipit etiam pignorationem recipere potest.*
27. That is, if the one who gave a pledge says that he has received back something other than what was given as pledge.
28. The lender, who has received the pledge from the borrower, POEFNM 358-2.
29. According to the gloss, "the part" is the increase in value of the pledge and the "whole" is the pledge itself.

ding to the pertinent rule.³⁰ The same rule applies to the heirs of the pledgee and the borrower after death,³¹ as well as to those who are entitled to the pledge by virtue of a will, those whom the judge authorizes to accept payment of debt,³² those who are under guardianship during their lifetime and after their death, and the judge, if the above mentioned persons are missing.³³

MAK 45. If someone has left anything³⁴ belonging to him with another person for a period of thirty years and has not asked for it, he cannot claim it after the expiration of this period, nor can his son.³⁵ The same principle governs administration [on behalf of another].³⁶ But if a pledge is in the hands of the claimant, and has been in his possession [for thirty years], without passing to another,³⁷ he may either demand the return of the object given on loan or keep the pledge in his possession; but [he may] not [do this] if the pledge has passed to the possession of another. The same principle also applies to legal actions for debts, inheritances, [the fees for] judgment,³⁸ laws,³⁹ partnerships,⁴⁰ fraud,⁴¹ the boundaries of lands, wells, streams flowing beside houses and through towns, gardens and similar things — if one brings an action for any of these after thirty years have elapsed, he may not be given any relief.

MAK 12. A father shall not be liable for a loan contracted by his son, if it is proved that the son borrowed without his father's permission. Neither is a man responsible for the debt incurred by his mother, nor the brother for [the debt of] his brother or for his father-in-law, unless he acted as a guarantor.

A guaranty of debt and a guaranty of person are two distinct things with different meanings. A guaranty of person is a guaranty to produce a person, while

30. This "rule," ሥርዓት ፡ is the handing over of the pledge to a trusted person or the creditor and its restitution in due time, that is, after the payment of the debt to the debtor, POEFNM 358-3.
31. After the death of the debtor and/or the creditor, their heirs shall assume their respective positions as regards the debt and the pledge. (See the Arabic text in the following footnote). The POEFNM 359-1 says that they shall follow the "rule" of the preceding footnote.
32. Persons such as a guardian, an administrator, etc., to whom the pledge is delivered by judicial decree shall follow the above mentioned "rule," n. 30 *supra*. The Arabic text says: "The legal provisions and the juridical status of the heirs, as well as the provisions concerning the pledge and the debt, are the same as those regarding the original creditor and the debtor" (3/277).
33. An object whose owner is missing goes to the judge (የጥሬ ፡ ብር ፡ ለጻፍ ፡ ያምር ፡) but if it is a pledge the judge also must pay the debt, in conformity to the pledge's "rule" (ብርዓት ፡ ከፍሎ ፡ ማያገውን ፡ ይተበል ፡) POEFNM 359-1; see also n. 30 *supra*.
34. Gloss: "an object taken as pledge."
35. The reference is to the *longi temporis prescriptio*, Cod. VII, 39.
36. The POEFNM 359-2 says: "After thirty years, one cannot say to his administrator: you have been my administrator: measure, count," that is, give an account of the administration. The use of the term "administration" in the title of this chapter is justified by this short passage. The phrase also appears in the gloss.
37. Gloss: "the lender."
38. The የጻፍት ፡ ልዩ ፡ "the fees due to the judge" (1/278).
39. Laws concerning husband and wife with respect to the dowry, outfit, etc. (የባልና ፡ የግብት ፡ ነገር ፡) POEFNM 359-3.
40. Money or other things contributed in forming a partnership, POEFNM 359-3.
41. የትምያ ፡ ነገር ፡ "anything which has been taken by force," POEFNM 359-3.

a guaranty of debt is a guaranty to pay a debt.⁴² A guaranty of debt [is thus]: a guaranty of debt given for a person whose means are known, and for a determined period of time, is valid.⁴³ One may act as guarantor for a person of sound mind only at his request; but a guaranty on behalf of a person who is mentally incapable may be given without his request.⁴⁴ One who stood as guarantor at a person's request may claim whatever he has paid on his behalf; but one who stood as guarantor without the guaranteed person's request cannot reclaim anything from him except the amount he paid for his maintenance.⁴⁵

The form of words to be used when giving a guaranty of debt is thus: the guarantor shall say: "I, A, stand guarantor on behalf of B for (a specified amount)." If a person has said: "I stand guarantor on behalf of B for what he owes to C," and this is proved by witnesses, he is liable for what he guaranteed at that time, but not for what the debtor alleges without producing witnesses.⁴⁶ A guaranty of debt wherein the guarantor says: "Throw your property into the sea and your dresses into the fire on my guaranty," is not valid.

The lender must first claim his property from the borrower, and claim it from the guarantor only if the debtor does not pay him.⁴⁷ If the borrower goes far [from the country], the judge shall grant a period of time to the guarantor [to find him]. If he does not succeed in finding him within that period of time, let the creditor stretch his hands to take the borrower's property in proportion to the debt, if it is sufficient to meet the debt;⁴⁸ otherwise, let him stretch his hand towards the guarantor's property in proportion to the debt. The lender must [first] sue the debtor and [then] the latter's guarantor; if there is a secondary guarantor,⁴⁹ the lender has recourse against each of them.⁵⁰ If any of them dies, his liability devolves upon the survivors. If the creditor releases any of the others [liable], and gives up his claim, the guarantor shall be released as well, and the claim [against him] shall be cancelled. If one of the guarantors has paid the debt, the creditor's claim against the others⁵¹ concerning the loan is cancelled.

42. ለድገፍ : "guaranty of person," is the *vadimonium* or the *cautio judicio sisti*. Thus, መድገፍ is the one who guarantees the presence of the debtor or his own presence in the absence of the debtor before the court of law when a claim for the payment of the debt is made. This is related to the Roman *Var*; the traditional term is የሊጅ፣ ዋስ : "guarantor of the hand." For ትሕብት : the term "guaranty of debt" is used here, and ተሐባዩ : is the guarantor. ተሐባዩ : is the one who guarantees the payment of the debt, from his own account if need be. Traditionally he is called የገንዘብ፣ ዋስ : "guarantor for the amount lent." This is the equivalent of the Roman *praes*. See POEFNM 360-2; Gai. IV, 94, 184-187.
43. An alternative rendition in the POEFNM 360-2 says: "A guaranty of debt given by a person of substance and for a determined amount is acceptable."
44. Translated following the gloss and POEFNM 360-2. ትእዛዝ፣ ዚህሁ : "at one's command," means, in this context, "at one's request," *ibid*.
45. Following the gloss which says: ለቁመተ-ሥጋ፣ "for the body's sustenance." Arabic text: "One who may dispose of his own property may act as guarantor, whether he knows the person for whom he acts as guarantor or not. One may guarantee [with the following formula] ..." (1/279).
46. Arabic text: "If one said: 'I stand as guarantor for the sum due by A (debtor) to B (creditor),' he is guarantor for how much may be proved to be due to B by A at that time, not of how much A may confess to owing without proof" (2/279).
47. *Beneficium ordinis vel excussionis*, Nov. IV, 1.
48. In the POEFNM 361-3, "Let the guarantor take the borrower's property and pay off the debt if the property can meet the debt; if not, the creditor shall make up his credit from the guarantor's property."
49. This second guarantor is called ጠላፋ፣ ዋስ : "the joined guarantor," POEFNM 361-3.
50. That is, the debtor, the first, and the second guarantor.
51. Following POEFNM 362-1.

If the debtor cannot be produced on the date fixed, the judge must grant the guarantor an extension of time to bring the person before him. If he does not succeed in bringing him within that time, and if he stood guarantor only for his face, he is merely responsible for bringing him in. But if there was an agreement whereby the guarantor bound himself [to discharge a debt in the event that he failed to produce the person on request],⁵⁹ and he fails to produce the person, he shall become guarantor for the debt and his condition is thus; from that moment he shall be considered as guarantor for the amount lent.⁶⁰ If a guarantor of person is not found and another stood as guarantor of him, each one is responsible for the guaranty of person he undertook.⁶¹ One cannot be guarantor of person for one who has been condemned to death. If the person for whom one stood guarantor dies, an action may be brought against his guarantor.⁶² The creditor, however, must first sue the debtor; if he does not find him, he shall then sue the guarantor of his person.

RSTG 19. A priest cannot act as a guarantor for anyone, nor can he take any objects as pledge.⁶³ **NIQYA 13.** Nor shall a woman stand as guarantor of person or debt. As for loan upon a written deed or upon a trust, if the debtor denies having incurred the debt, it shall be claimed by challenging the debtor to swear. If he takes the oath but, after this, witnesses testify that the written deed is his, he will be judged as a debtor who denies his creditor on oath is judged. We have dealt with this at the beginning of this chapter.⁶⁴ If he does not take the oath, he is liable for whatever is stated in the written instrument. If there is no written document [but there is written guaranty of debt], the debtor shall pay on the basis of the [written] guaranty.

And you must note, as is said in the Mosaic Law, that God warns creditors to abstain from putting pressure on a debtor who is unable to pay his debt, as by taking from him the garment he is wearing. The Lord also forbade the lender from asking his debtor to pay him and, as is said in the Gospel [quoted] at the beginning of this chapter, God warns the creditor not to sue his debtor or ill-treat him. Therefore, one must not abuse the needy. If a debt is to be repaid on a definite day, the debtor must be asked to pay only at that time. If creditors have no confidence in a debtor, the former shall be given a guarantor by the order of the judge.⁶⁵

If a debtor has some property that can be claimed and his creditors ask the judge to give his decision [apportioning] that property, let the judge do so.⁶⁶ If the

59. Gloss: "I will bring him in on (a certain date); if not, I will pay on his behalf."

60. Arabic text: "If an agreement is made that in case of failure to produce the debtor on request, the guarantor shall be guarantor for the debt, which amounts to (a specified sum), he is liable from that moment ..." (2/285).

61. Arabic text: "Both are guarantor of the debtor's person and the creditor may ask either of them to produce him" (3/283).

62. Alternative interpretation in POEFNM 364-2: "If the debtor dies, the guarantor shall not be sued." Arabic text: "... the guaranty is terminated" (4/283).

63. The Arabic text says that he may not act as a guarantor of debt, nor of person (5/283). In the POEFNM rendition it is said that the priest shall not appear before a lay judge (በጸሎት : ጳጳስ : ቅጥ) to deal with questions concerning guaranty, 364-3.

64. He shall pay double; see p. 160 *supra*, and POEFNM 365-1.

65. According to the POEFNM interpretation, 365-3, the passage should run: "If creditors suspect that their debtor intends to leave the country and go abroad before the date of payment, they may request through a judge's order that the debtor produce a guarantor."

66. POEFNM 366-1 interprets: "The judge shall determine the portion by saying, ጸሀን : ቃህል : ስጥ | ጸሀን : ቃህል : ብላ | ጸን : ቃህል : ጠጣ = "so much you shall give, so much you shall eat, and so much you shall drink." The Arabic text has a different meaning, that the creditor shall ask the judge for the attachment of the debtor's property (6/284).

debtor wishes to sell [property to pay his debt], let him first sell,⁶⁷ through a person he trusts, those things which are readily available, in his presence⁶⁸ and in the presence of the creditors or of his and their guarantors. The price must be equitable and carefully determined. Perishable objects shall be sold first; then, beasts, and then, buildings. Everything shall be sold in the market place, in the presence of the creditor's family.⁶⁹

The debtor shall pay only the debt which becomes clearly known through the testimony of witnesses. He shall not pay upon the mere assertion of the creditors, and shall be careful not to be deceived. A debtor's admission of liability is not sufficient by itself. There shall be no violence towards the debtor; what is necessary for him [to keep] shall be determined according to his position in life.

In case the property of a debtor is not sufficient to discharge his debt, his creditors shall share [the available property] in proportion to the amount [each loaned]. If the price of the debtor's property is sufficient to make his creditor whole, he shall be given the whole price. If at that time the proceeds of the sale are greater [than the loan], the excess shall be given to the debtor.

If the debtor [claims to] have no property and tells his creditors of his poverty but his creditors ascertain through the mouths of people who know his [true] condition that he spoke falsely, let the judge put him in chains until he pays them. If they wish, they may require him to take the oath, and release him [if he swears that he is poor]. If the debtor's poverty is proved by the testimony of two witnesses who know his condition, the creditor must wait until his poverty passes. If he draws wages, he shall be required to pay a certain amount [to his creditor], after deducting what he needs to live. If his poverty is not ascertained, his release shall be delayed.

67. According to the Arabic text this sale takes place by order of the judge (6/284).

68. POEFNM 366-1: "in the presence of the judge."

69. That is, if the creditor himself is absent. The Arabic text says that everything must be sold in the appropriate market, and in the presence of persons who have practice and experience in selling such things (2/285).

with interest, as in the case of dinars, silver coins or other objects which may be measured and weighed, since this would be loan [with interest] and not a gratuitous loan.⁶

6. According to the glosses this passage is understood as follows: It is not permitted to ask for interest (gloss: "usury") on lent capital, such as dinars, silver coins, etc. ... because inanimate objects like these do not undergo any fatigue (ደካም ፣ የለበጥም ፣); whereas if the object lent is a beast, such as an ox or an ass, one may rightly ask for remuneration, as compensation for the toil of the beast. See also (6,287.)

CHAPTER XXIX

DEPOSIT

TS 18 and what is added to it.¹

A deposit is an object which the depositor delivers to the depositee, so that the latter may keep it for the former, without retaining [for himself] the fruits it bore² when he restores it. A deposit is an object deposited by its owner upon trust in the depositee.³

One who has received a deposit must keep it with great care,⁴ care as great as he applies to his own property.⁵ He shall not be liable if it perishes despite his diligence. [It may be that] the depositee will offer to return it to its owner while it is in good condition, and the owner will refuse to accept it. If it then perishes or becomes spoiled by a natural occurrence — as might an animal, which is mortal, or something which can be eaten by moths — or if something then happens to it which the depositee cannot prevent — such as fire, shipwreck, pillage, theft or robbery — he shall not pay unless reliable witnesses testify that this took place because of his fraud, his bad administration, or his failure to care for it as his own property.⁶ [If there is no testimony of reliable witnesses], the matter must be investigated.⁷ [He must pay] if there was [a special] agreement between them concerning the deposit.⁸

If the owner asks for the deposit, and the depositee refuses to return it although he could do so, or if the depositee at first denies [having received it] and later admits it, he shall return the deposit only.⁹ If he has used it as if it were a loan to him, or has lent it to a person, or has hired others [with it],¹⁰ or has [given] it as pledge or as a loan with interest to be paid by the borrower, he shall give a guaranty of debt to return it to the care of the one who gave it to him.¹¹ If

1. That is, TS 18 and whatever was added to it from other sources; or, according to POEFNM 368-1: "Whatever is added to the deposit, such as the calf born by a cow which was given in deposit." This second interpretation refers to what is said later, that is, "whatever is obtained from the deposit . . ." *infra* p. 170.
2. The above rendition follows POEFNM 368-2, and is consistent with what is said in Dig. XXII, 1, 38.10. The ambiguous terms *ጠለጎበለ* : *ካዕበት* : literally, "without double," may also be taken to mean "without remuneration," to show that *depositum* is a gratuitous contract.
3. Dig. XVI, 3, 1.pr.
4. *Exacta diligentia*, Inst. III, 14, 2.
5. *Talem igitur diligentiam prestare debet, qualem in suis rebus*, Dig X, 2, 25.16; Inst. III, 14, 2.
6. He is not liable, because it is a *casus fortuitus*, Inst. III, 14, 2.
7. Following the POEFNM 368-3.
8. Gloss: "If the depositor names a definite date and says to the depositee: I will come back on (a specified day), but if I do not, hand over the deposit to B, if the depositee does not deliver it, he shall pay," that is, he shall pay for damage later done to the deposit. See also POEFNM 368-3.
9. He shall pay the equivalent of the deposit (*in simplum*) and not double (*in duplum*) as would be the fate of one who denied having received a deposit but was impeached by witnesses (*adversus infitentem in duplum agatur*); Inst. IV, 6, 19; *idem*, 23.
10. An alternative rendition: "... by hiring it out to others," POEFNM 369-1.
11. The Ge'ez uses the prefix *አው* : "or," before the phrase "he shall give," indicating a possible deletion. But POEFNM 369-1 states that this prefix is to be omitted.

the depositor transfers the deposit to another person without being under the necessity of going on a journey or having another good reason to transfer it,¹² he shall give a guaranty of debt to return it. And the second [depositor] must not give it to the owner unless he has an order from the one who deposited it with him, either his word given face to face, or his message delivered either by an envoy or in an evidently authentic letter.¹³

The one to whom a deposit is entrusted may not refuse the writing of the depositor¹⁴ by which the deposit with him is [described]; nor may he refuse to make out a list of the objects deposited with him.¹⁵ And if the depositor has ordered that the deposit is not to be displayed,¹⁶ but the depositor shows it to someone; or if he gave orders that it was not to be given to a certain person and the depositor gives it to that person; or if the depositor instructed him to put it in a definite place, specifying the place he did not want it put, and the depositor refuses to follow the instructions without justifiable cause, he shall be liable to pay the depositor [if the deposit is lost].

If a person inherits a deposit from the depositor and, knowing that it was a deposit and able to remind its owner of it, fails to inform the owner, he is liable to pay. If the depositor wants to travel to a distant place, and can find neither the owner nor his administrator, he shall entrust the deposit to a judge or, if this cannot be done, to a trusted person.¹⁷ If he cannot find the owner of the deposit, he shall wait for him until that time after which a person of the owner's age is not [likely to be] alive; he shall then transfer it to the depositor's heirs. If the depositor has no heirs, the command [is that it must be given] to the altar, as alms for the salvation of the owner's soul, either by making a legacy or by giving the deposit as alms on his behalf, whether through the order of a judge or before witnesses.

The depositor and the depositor may terminate the [contract] of deposit whenever they wish, provided that the depositor can restore the deposit and the depositor can receive it. If one [of the two parties] refuses, he is liable and the other is free from any responsibility.¹⁸ Whatever is obtained¹⁹ from the deposit and set aside [for the benefit of the depositor] and whatever is similar to this is governed by the provisions on deposit.²⁰ And [similarly], anything produced by the deposit

12. Gloss: "Because the place is insecure, or because his enemy wants to cause damage to the deposit."
13. That means, by writing a letter bearing his signature, his seal, and other signs of a valid document (7/289).
14. In this context አጭጋቢ : "mandator," means አስጠባቂ : "depositor," POEFNM 369-2.
15. The first provision means that the depositor must accept both the deposit and the document if the depositor wants to give him a document specifying the deposit. The second provision concerns the receipt the depositor must give the depositor. Guidi says that only the second provision is to be found in the Arabic text (8/289).
16. In the sense of keeping the deposit hidden, to reduce the risk that it will be stolen.
17. Gloss: "[he shall leave the deposit] in the house of a trusted person."
18. Guidi's interpretation is followed here (text/290). An alternative interpretation in POEFNM 370-1 says: "If the depositor refuses to give it back, he becomes a debtor; the deposit is transformed into a loan and the relationship between the parties is governed by the provisions on loan."
19. In the text: ወላኒ ለሰጥባለጥ : literally, "whatever is collected."
20. The term ለሰጥባለጥ : translated here as "[thing] set aside," according to the Arabic text is "the reproduction of the animals" (1/291). Thus, the passage means that the legal disposition of anything added or born to the original deposit is the same as that of the deposit, Dig. XVI, 3, 124.

or any benefit derived from it or the like, is governed by the provisions on a deposit [entrusted to one] in the presence of a judge. The one who received a deposit from its owner through the hand of his envoy must give it back to the owner, not to his envoy, unless the owner orders otherwise, since the deposit belongs to the owner. If the owner dies, the deposit shall be given to his heirs. And he who receives a deposit from one who bids him to give it to another, shall personally deliver the deposit to the said person and inform him that it is a deposit. A depositee shall not restore a deposit to its owner through another's hands.

If two individuals deposit something with a third person, the latter shall not return it to either of them without the consent of the other. The one with whom a slave or an animal is deposited shall be held liable if the deposit dies because he failed to give it food or drink. Even if the depositor told the depositee to give them neither food nor drink, the latter may claim compensation from the former for whatever he supplied them. If the depositor refuses to pay him, the deposit shall remain with the depositee as a pledge in proportion to the expenses he incurred, and ceases to be a deposit from that time. If a dispute arises over the deposit and the reimbursement of the expenses, let it be settled according to the word of the depositee supported by his oath, since the depositor has entrusted his object to him; but if the depositor produces reliable witnesses, let the dispute be settled pursuant to his word.

No one may make a deposit except the person who may dispose of [his property] and demand it back; [that is, the person who is] entitled to take back his property, being capable of disposing of and receiving it.²¹

[The contract of] deposit ceases upon the death of the depositee, or until the depositee recovers his reason, if he is possessed by the devil. And the one who received a deposit and later became aware²² that the depositor had stolen it or had taken it by violence, must be sentenced to pay double.²³ Whosoever does not take care of the deposit as he would of his own property commits a fraud;²⁴ the depositor may sue him as a fraudulent, bad-hearted, and negligent person, unless there was a [special] agreement [between them], since [in that case the judgment] regarding the substance [deposited] is different.²⁵

21. The Ge'ez text in this passage is very ambiguous. The Arabic text provides more clearly that: "No one may make a deposit except one who may dispose of his property and may demand it back; and one must make a deposit with a person who can dispose of his property and may act as a depositee; this means that a minor can be neither a depositor nor a depositee" (4/292).

The POEFNM 372-2 says that a deposit must be entrusted to a person who is accustomed to restore it to its owner. It goes on, commenting: "A deposit should be entrusted to a person who can give it the care required by its nature; for instance, beasts like sheep or cows must be entrusted to the care of a person who knows how to look after them, such as a shepherd. Similarly, books should be entrusted to a learned person."

22. Arabic text: "The one who accepts a deposit with the knowledge that it was stolen ..." (5/292).

23. The POEFNM 371-3 adds: ፅጌፍ ፡ ይከረፈ ፡ የሌባ ፡ ጥሻ ፡ የተገኘ ፡ ጋሻ ፡ ሆነ፣ ጥፋፍ ፡ "he shall pay double, since he became the shelter of the thief and the shield of the robber."

24. Dig. XV, 3, 32.

25. According to the gloss and POEFNM 372-1, if there was no negligence on his part, the depositee shall not pay. The sense of the last sentence is not clear. The Arabic text reads: "One can sue the depositee for fraud or negligence, and also on other grounds, if there was a provision to that effect in the contract" (2/293).

CHAPTER XXX

MANDATE¹

From the canons of the Kings and from [other] counsels given on mandate,²
MAK 57, 71, 75, 103, 120.

Anyone who adheres in every respect to the rules regarding his soul and to the laws is worthy of being appointed a mandatary.³ A mandate may extend to all affairs and judgments, or may be given with respect to a specific object, to the exclusion of others. The mandatary accepts the mandate with or without remuneration.⁴ If the object of the mandator perishes in the hands of the mandatary without fraud or negligence on the latter's part, he shall not pay. A mandate is not valid unless the mandator gives it verbally and the mandatary accepts the word of the mandator [either formally] or by his actions.⁵

The mandatary must not sell anything on credit unless the mandator has ordered him to, nor must he sell anything for more or for less than its price.⁶ If the mandator says to him, "Sell some of my property on credit," he must sell the object immediately, provided that its price will not be reduced because it is sold immediately. The mandatary shall not buy for the mandator any silver object different from that which he ordered orally or by letter.⁷ And if his mandator has said to him, "Buy something [worth] 1000 [dinars] for me immediately," the mandatary may buy it on credit⁸ at [the price of] 1000 [dinars]. And if the mandatary is [instructed] to keep what he has bought, he must return it to the mandator if it

1. ገዳታ: "mandate," is often erroneously interpreted as ቡድን: a royal appointment or stewardship in the royal house or in the great lords' houses. Thus መጋቢ: "mandatary," is taken as an important official such as ስጦ: ገዳታ: "chief," POEFNM 372-1; (3,6/293). For this reason, some interpretations which are not consistent with the text have cropped up. Rather, this chapter deals with principles of *mandatum*; thus, in this context, ገዳታ: means *mandatum* or mandate and መጋቢ: is *mandatarius* or mandatary. The title in the Arabic text is: "On proxy or mandate" (3/293).
2. From the advice on mandate or, as the POEFNM 372-1 says, from the experience in administration acquired in the royal house.
3. POEFNM 372-1 says: "Anyone who can administer all his affairs properly and can give a sound judgment is worthy of being appointed a chief." Arabic text: "Anyone who can administer his own affairs can be also appointed administrator (mandatary) and proxy for others" (5/293).
4. In the commentary the mandatary in this passage is erroneously taken for an official, n. 1, *supra*, who paid or was exempted from paying the መገገገ: ገንዘብ: "money of investiture," upon being appointed to his post. POEFNM 372-2; (6/293).
5. Taking the actual management. POEFNM 372-3. The gloss says: "[It is valid] if the mandatary accepts the mandate after counting and measuring [the property]. The remaining is diadem (ራስ: ወርቅ:) cross (መስቀል:) and chair (መንበር:)." The last sentence refers to things which do not need to be counted.
6. Arabic text: "He must not sell ... unless he has been told to, and then not at a price lower than was fixed by the mandator" (1/294).
7. Arabic text: "One may not buy for him a thing other than what he said to buy" (2/296); Inst. III. 26,8.
8. Since the main interest of the mandator is to have the goods immediately, the mandatary may defer the payment by buying the goods on credit.

becomes defective while it is in his hands.⁹ And if he has given the object to his mandator, he shall not retake it without the mandator's order. In case the mandator says, "Buy for me with your own money," or "[Give me] oil worth 1000 [dinars] from what you have and I will pay you in the future," he must buy it for him. The oil shall belong to the mandator, who may use it only after he has paid the price: the 1000 [dinars] shall be [given] to the mandatary when the time [for payment] is due, and the oil shall remain with him as a pledge of the price.

If the mandatary has bought something for the mandator with his own money, but without the mandator's order, [the object he bought] shall remain in his hands as a pledge. If he is instructed to buy a specific thing, he may not buy that object for himself. Nor may he take for himself without permission what he bought on behalf of the mandator who appointed him mandatary, especially if he used the mandator's money. The mandatary must not defraud the mandator in the thing sold, [saying that he has sold it] for less than its actual price,¹⁰ or in the thing bought, [saying that he bought it] for a price higher than it actually cost¹¹ at the time and place of the bargain. [He must make an accounting] according to the price agreed to by the buyer and the seller, an accounting which is more or less according to the estimation of experienced persons.¹² In particular, the mandatary must not make fraudulent [contracts] with the family of the mandator, his father, his son, grandson or his wife, [to the prejudice of the mandator].¹³ If the mandator gives one dinar to the mandatary to buy a sheep for him, but he "buys with the dinar two sheep each worth one dinar, both shall belong to the mandator. If the mandator tells the mandatary to sell something to a certain person at a fixed price, having no desire other than selling the object, the mandatary may sell it to another person provided that he is sure about the price.¹⁴

If there are no witnesses to testify in a dispute, the mandatary's word shall be accepted, since the mandator has entrusted his goods to him. If he has paid a debt on behalf of his mandator in the latter's absence but has obtained no witnesses to testify to the payment, and if afterwards the creditor denies having been paid, the mandatary must pay the debt. If the mandatary has deposited an object with another person, he must tell the depositee that the object belongs to the mandator. In the case where a man acts as mandatary for property owned by two persons, neither of the owners may dispose of the property individually except in cases of gratuitous manumission of a slave:¹⁵ nor [could one of them give] a

9. This passage is explained by Guidi as follows: "If the mandator orders the purchase of oxen, and these oxen fall sick after they are delivered to the mandatary, due to no fault of his, he may refuse to take them under his administration and send them back to the mandator" (4/294).
10. Gloss: "at the time of the sale."
11. "The mandatary must not lie to the mandator and say that he sold the goods for twenty [dinars] while in fact he sold the goods for twenty-five [dinars]. By the same token he must not say that he bought something for twenty-five [dinars] if he bought it for twenty [dinars]" POEFNM 373-3.
12. The Arabic text says that the mandatary may not enter on behalf of the mandator either a contract of sale at a price lower, or a contract of purchase at a price higher, than that charged at the time and place where the bargain takes place, unless the difference is made up of what can normally be expected in the market, such as difference in estimating the price (4/294).
13. The gap left by the Ge'ez has been filled with the following words in the Arabic text: "... and in particular the mandatary must not enter a contract prejudicial to the mandator with members of the latter's family — with his son, for instance" (4/295).
14. Provided that it is the price fixed by the mandator.
15. For instance, if a slave belongs to two masters in that he works one week for one of them and the next week for the other, one of the two masters may manumit the slave as far as he is concerned, so that the slave, as a free man, may work during that week for his own benefit (1/296).

command [concerning the jointly owned property]¹⁶ without the [consent of the] other or pay a personal debt [out of the jointly owned property]. The one who buys a slave must record his purchase in a book.¹⁷

The mandatary may not delegate his mandate to another person without an order from his mandator, although if he wishes to go [on a journey] or necessity requires, he is not to be prevented from designating someone to assume his mandate until his return.¹⁸ A mandate shall not be taken away from the mandatary, unless with the consent of the mandator,¹⁹ but shall remain until the day fixed for its termination.²⁰ And the mandatary shall not give up the mandate of his own will, but [must remain as mandatary] as long as the mandator wishes,²¹ and then until he transfers the administration to his mandator so that the mandator may administer his property himself or find another mandatary like him. Under no other circumstances may the mandatary give up his mandate.²² If one of them abandons his administration because of death,²³ or if there is [another] master [who takes the mandator's place] over the mandatary, the mandate ceases whether the other approves²⁴ or not.²⁵ And if the mandatary becomes afflicted with grave insanity or proves incapable through blindness or some such thing, the mandate ceases whether the mandator approves or not.

16. The Arabic text is completely different, since it says: "If one appoints two mandataries for a specific thing, one of them may not act independently except in the cases of a gratuitous unconditional manumission of a slave, the restitution of an object deposited with him, or the payment of a debt of the mandator" (2/296).
17. Possibly this sentence was erroneously transposed from the following chapter. POEFNM 373-3 says that the price and the slave's name is to be recorded.
18. The Arabic text says: "The mandatary may not designate someone else to take his place unless he has the permission of the mandator or unless he himself is present" (1/297).
19. For this and following passages see n. 25 *infra*.
20. POEFNM 374-3 interprets እስከ : ይባዳል : ከዚህ : "until the day fixed for termination," as እስከ ስራው : ድረስ : "[he shall discharge his duties] until he is dismissed."
21. እስከ : የአምር : "until he knows," is interpreted as እስከ ወድ : "as long as the mandator wishes," or, until he becomes mature if he is a minor (3/297). The POEFNM version, 374-3, reads: "until the mandator dismisses him subsequent to discovery of a fault committed by the mandatary." But see n. 25, below.
22. For this sentence, the text says only ወግእዛኒ : "never"; the rendition given is from POEFNM 375-1.
23. Inst. III, 26, 9.
24. The phrase ለሌላው : እውነት : ካልተገኘው : ለሌላው : ለምሳሌ : "whether the other knows it or not," is interpreted as ቢወድም : ባይወድም : "whether the other approves or not," POEFNM 375-1.
25. The preceding passages were misunderstood by the translator. The Arabic text reads: "The mandatary is relieved of his mandate only when notice of his dismissal is served upon him. Nor is he released from his responsibilities until he has been informed and the mandator has been given an opportunity to take over the management himself or appoint another mandatary. But if one of the two (mandatary or mandator) cannot take over the management, because of death or attachment, ... the mandate is terminated by operation of law whether the other knows it or not" (8/297).

CHAPTER XXXI

LIBERTY, SLAVERY, AND THE MANUMITTED¹

The major part of this chapter is extracted from the canons of the Kings. TS 34; MAK 35, 36, 37, 43, and the rest.²

[The state of] liberty³ is in accord with the law of reason, for all men share liberty on the basis of natural law.⁴ But war and the strength of horses bring some to the service of others, because the law of war and of victory⁵ makes the vanquished slaves of the victors.⁶ Mosaic Law shows that unbelievers and their children must be held as slaves since it is written there: "Those whom you take from the people who dwell around you and the aliens who dwell among you, let them, men and women, be your slaves. You shall buy [slaves] from among them and from among their offspring born in your land, and they shall be for you and your children after you, as an inheritance."⁷

The sale of a believing slave to an unbeliever is not allowed. The children of a slave belong to their master, be they born from a free woman or from a female slave.⁸ The child of a female slave belongs to her master, whether he is born from a free man or from a slave and regardless whether he was born from a union by marriage or from fornication with someone other than her master. In case she becomes free during her pregnancy, the child in her womb is free, because the mother was freed while she was carrying him in her womb.⁹ One may set free the child in the womb without setting free the one who is pregnant. The child of a once-free woman born from a free father or from a slave who was manumitted [is free], even if she became a slave after she conceived him and before she gave birth to him, because the enslavement of another must not affect one's state of freedom.¹⁰

To manumit [a slave] is one of the deeds of perfection which must be done, for it is an excellent form of alms; it is the granting to a man of the right to become master of himself, according to the original law of his natural liberty.

1. אָנְוִיָּו : rendered "manumitted," means "freemen," POEFNM 375-2.
2. The "rest" connotes the remaining chapter of TS, and MAK, POEFNM 375-3. Arabic text: "...and the rest as derived by analogy from the said canons" (2/298).
3. אָנְוִיָּו : "liberty," is not found in the text but is commonly glossed, POEFNM 375-3.
4. That is, all men are free *jure naturali*, Inst. I, 5, pr.
5. The commentator puts it: פֶּסַח : אָנְוִיָּו : פֶּסַח : אָנְוִיָּו : "the language of the spear and the neck of the horse," POEFNM 375-3.
6. This is to show that hostile capture is one of the causes of enslavement.
7. Lev. 25, 44 ff.
8. That is to say: a) the children born from slave parents belong to the parent's master; b) if their mother is a freed woman and their father is a slave, they are slaves and belong to their father's master because they follow their father's status. The Arabic equivalent of a) runs: "The child of slave [father and a slave mother] belongs to the mother's master," (5/298); Dig. XIII, 7, 18.2.
9. Dig. I, 5, 5.2.
10. *Non debet calamitas (enslavement) matris nocere ei qui in ventre est.* Dig. I, 5, 5.2.

A manumission is not valid unless the slave is given his liberty by his master.¹¹ If he promised to manumit him on some condition,¹² he may sell the slave before the fulfillment of the condition he set. If he buys him a second time, this condition ceases [to have effect] until he renews it.¹³ If he sets a definite time in the future for her manumission, she is not in a state of slavery¹⁴ but must serve him until the time of her manumission. She is master of herself and may do whatever is advantageous to her and not against [her interest]. One who is manumitted shall serve his master's son for a definite number of years after his manumission, but the manumitter may not impose on him and his offspring the obligation to serve him and his descendants during their lifetime, nor [may he demand] that all their earnings be given to them,¹⁵ since this would be a way of continuing his slavery.¹⁶

Manumission is effected by declaring it publicly in the church or before the bishop or before the priest¹⁷ or before three witnesses.¹⁸ It may also be effected by a letter¹⁹ or by a written will.²⁰ If it is by the will of the manumitter, the rules on succession govern it, and the manumission may concern all the slaves or particular ones. If one has three slaves and manumits one, he is within his right in doing so; if he decides to sell the others, he may do this. Moreover, a manumission may be effected either by giving full liberty to the slave or by freeing a part of him. The one who retains a third part of his slave and frees him [as regards the other two thirds] may do this. If he wants to buy²¹ the entirety of a slave he [owns jointly with others] and to give him his liberty, his partners must sell [their shares of] the slave to him for the proper price. And when he owns the slave entirely, he shall set him free.²²

11. Guidi believes that the master must manumit the slave before the judge and witnesses (4/299). But the text seems to refer to the *manumissio vindicta* of the later classical period of Roman law, whereby the litigious character of manumission was mitigated in that the judicial formalities were not deemed necessary, Dig. XL, 2, 23; Inst. I, 5, 2.
12. በከለ ፡ ፍፍ ፡ "in another manner," must be taken to mean "on some condition," see POEFNM 376-3 and the following footnote.
13. Arabic text: "A manumission is not valid unless made by one who has full power over his property. If he makes the manumission subject to certain conditions, he may sell the slave before these are fulfilled; and if he buys the slave again, the previous conditions shall not be valid until he renews them" (6/299).
14. She is a *statuliber*, Dig. XL, 7, 1.
15. To the manumitter and his descendants.
16. Arabic text: "If the master promises to manumit the slave at sometime in the future, he is only entitled to use the slave until the said time arrives. And every condition he puts in the manumission is valid, provided that it does not render the manumission ineffective. If, for instance, he makes it a condition that the slave, after his manumission, serve his son for a certain number of years, this can be done, but not if the slave and his descendants must serve the manumitter and his descendants as long as they live and if the former's earnings must go to the latter, because this is tantamount to carrying on with the slavery" (5/300).
17. This is the *manumissio in sacrosanctis ecclesiis*, Inst. I, 5, 1.
18. *Manumissio inter amicos*, *ibid.*
19. *Manumissio per epistolam*, *ibid.*
20. *Manumissio testamento*, *ibid.*
21. The term in the Geez text is ወይተ ፡ "to sell," but for sense it has been interpreted as ተግደጦ ፡ "to buy."
22. This is the form of manumission of the *servus communis*. According to the principle of *favor libertatis*, if one of the joint owners of a slave sets the slave free to the extent of his share the others must do the same, but they may claim the value of their share, Inst. II, 7, 4; Dig. XL, 5, 24.10.

The price of a slave is like that of an object at any given time. It may increase or decrease. It increases in proportion to his hand's ability and decreases in proportion to his ignorance and his advancement in age. One must buy a Christian [slave] from non-Christian [owners] at the proper [price].

There are seven cases in which a slave must be set free from his master: 1) He must be set free if he was owned as a slave by one of the master's parents and one of his grandparents, or by one of the master's children and his grandson, or by the master's brother and one of the latter's heirs.²³ And if a man is part owner of a slave, so that there is another who shares ownership, if one of them is a rich man, he must buy him entirely and set him entirely free.²⁴ 2) If the master or his wife becomes the slave's godfather or godmother, or if the master's daughter, with her parent's knowledge, [becomes his godmother], or if the slave becomes a priest with his master's permission,²⁵ or if he becomes a monk,²⁶ he shall be set free. 3) If his master makes him a soldier, he must set him free. 4) If the slave saves his master from being killed by fighting for him or warning him against danger, the master must set him free in compensation.²⁷ 5) If a woman who is pregnant is set free, her child is also free. 6) If a slave has been put in jail by the enemy²⁸ and afterwards returns to his master of his own will, he deserves to be set free. 7) If a slave's master dies, leaving no heir except the slave's mistress²⁹ or the State, the slave shall be set free. And if one would manumit his slave for God's sake, or for any other reason, whether the slave is loved or hated, the latter deserves his freedom.

If a free man who has attained twenty years of age confesses to having bonds of slavery to another, consents to be sold, and then persists in this confession — so much so that his [purported] master sells him or gives him away as dowry to his wife — he becomes a slave. Especially is this so if it is said that he has agreed with the one who sold him on his price.³⁰ But if he has not attained this age, the judge and the governor must release him from the hand of the one he acknowledged as master or from the hand of the one who bought him; he must be set free. A slave who has been freed must return into slavery³¹ when it is proved before the judge that he insulted his master, or beat him, or beat his children without his permission, or ruined his master's property with the help of others, with the intention to harm him, especially if he caused injury to life [within his master's family]. He must be treated according to the command of the Mosaic Law.

23. The sense, as in the POEFNM 378-2, is that a slave must be set free by the third master who owns him by succession. If, for instance, a slave was owned by the grandparents and the parents of his master, the master must set him free.
24. See n. 22, *supra*.
25. *Non contradicente domino*, Nov. 123, 17.
26. Nov. 5, 2.
27. Dig. XLVII, 10, 5.11.
28. Gloss: "for the sake of his faith."
29. According to the gloss, "mistress" denotes the Church.
30. Obviously this deals with the *jure civili* enslavement in consequence of a fraudulent admission of slavery by a free man, motivated by an intent to be sold as a slave and to share the price he fetches with his purported masters. (Inst. I, 3, 4; Dig. I, 5, 5.1) "למִןּוּ" : "his price" should perhaps be taken to mean his *venditio*. The Arabic text says: "Particularly if it becomes known that he had agreed with the one who put him up for sale with respect to the price he would fetch, [he becomes a slave]" (2/303).
31. Arabic text: "The one who manumits a slave may make him revert to the condition of slave if ..." (3/303). This is what is known as *revocatio in servitutem* as regards a *libertus ingratus*, Const. Theod. IV, 10, 1.

A master shall not give his slave liberty, but then make him go out naked of his wealth.³²

A free woman must not marry a slave. Never shall she dwell with him in the house of his master, nor shall she make him dwell with her with the consent of his master. If she does these things, she shall be the slave of his master, like him.³³ The one who corrupts the slave of another which does not belong to him, or hides him and sends him away, must bring him back to his owner and give the owner, in addition, another slave or the equivalent price. The same applies to the one who takes with him the slave of another, which does not belong to him, and makes him his slave, well aware that he belongs to another. If the [taker cannot provide the equivalent price],³⁴ he shall be the slave of the slave's true master.

32. His *peculium* (?) Dig. XLI, 2, 1.5.

33. Inst. III, 12, 1.

34. The bracketed phrase appears in the gloss.

CHAPTER XXXII

GUARDIANSHIP¹

Taken from the Abtelis and similar sources.

Two things require guardianship.²

First. [Guardianship is necessary] for the one who is unable to distinguish in his mind that which is suitable for the perfection of [his] nature and good for his will.³ [This inability may arise] either because of an evil spirit which seduces him — this is the mad person — or because his brain is wrecked by disease — this is the feeble minded person, who forgets his previous actions — or because his brain is not mature — this is the boy who has not attained the age of eighteen years — or because his [mental] condition becomes more feeble than previously by nature,⁴ because of the use made of his brain — this is the case [of any man] when he grows old and approaches 100 years of age. Or it might be that the previous condition [of a man's brain] was healthy and perfect, but he did not use it properly, as in the case of the indolent. And such is the case of he who has used his brain for useless works in this world and in the future [world]. This is the one who is dissolute in his behavior and with respect to his wealth, like the spendthrift who wastes and squanders his property. Such a person must be watched over carefully, lest he also become dissolute in his faith, as by wearing prohibited things⁵ or by seeking many pleasures. The reputation of a dissolute man is in opposition to that of the wise man.⁶

Second. [Guardianship is necessary for] a situation which hinders an intelligent being from guarding himself and his property, such as that of a slave.

No person who is under guardianship because he is either mad, demented, a minor, or aged and absent-minded because of his advanced age, may enter into negotiations regarding the conclusion of marriage, or give a trustworthy word on his own behalf or on behalf of others. A foolish or dissolute man may be permitted to dispose of his own property on his guardian's command,⁷ but [may]

1. The Ge'ez term is ገዥነት; the same term used in Chapter XXX to mean "mandate." As pointed out in the gloss, ገዥነት in this context means "guardianship." It may be noted that the Ethiopian Civil Code adopts a different terminology; the person described here as "guardian" is styled as the "tutor" in the Code, and *vice versa*. Arts. 265 and 280.
2. More precisely, two classes of persons need guardianship. Arabic text: "Two causes make guardianship necessary" (4/304).
3. Arabic text: "He who cannot use his mind according to the requirements of its nature and with good discretion" (5/304).
4. Gloss: "because of old age."
5. Gloss: "by committing prohibited acts; or, to be taken literally." This raises the possibility that the phrase is used metaphorically, so "to wear prohibited things" may mean "to adhere to or to commit prohibited acts"; taken literally, it may mean wearing indecent or women's clothes. Arabic text: "...given to prohibited things" (1/305).
6. Arabic text: "The characteristics of the dissolute are opposed to those of a righteous man" (2/305).
7. POEFNM 381-1 says: "He may dispose of his daily food (በዕለት ሥራቱ) with his guardian's permission." The Arabic text says he may dispose of his property only with the permission of his guardian (6/305).

not [dispose of] other people's property.⁸ A slave may dispose of his property only on his master's order; and after he is set free he may confess that he was [his] slave.⁹ And if guardians lose anything of their ward's property, they shall repay it.

If one who is under guardianship draws up a regular and legal will during his sickness, it shall be valid after his death, even if he was mad or demented.¹⁰ But if the will departs [from the requirements of a regular and legal will,]¹¹ only what the governor and judge ratify [of it] shall be valid.¹²

The [natural] guardian is the [ward's] father, if he himself is not under guardianship; next the person appointed guardian by the father;¹³ next, the eldest brother, then the grandfather, then the paternal uncle, and then the paternal nephew.¹⁴ He who is the wisest among all of them precedes the others. As for one who is mentally defective and has a good son, this son has the right, more than any of those already mentioned, to be appointed guardian over his father; and after all these [comes] the father by dwelling who is the tutor. If none of the persons mentioned above is available, the judge shall appoint as guardian someone who is trustworthy and capable,¹⁵ after he has tested him.¹⁶

He who is appointed guardian may not sell anything without [the consent of] the other person who is appointed under him.¹⁷ [He must sell] at the current price,¹⁸ and dare not carry on trade with the property [of the ward] or sell on credit, unless it be upon pledge and guaranty. He shall not lend anything of the [ward's] property, but if he wishes to go on a journey, he must of necessity leave the property in deposit.¹⁹ However, to lend something to a rich man upon guaranty or upon pledge is better than giving it in deposit, if the borrower and the deposittee agree.²⁰ A deposit is given to the custody of the deposittee upon trust

8. Alternative interpretation, from POEFNM 381-1: "... but not the other objects which are under the administration of his guardian."
9. This declaration may be made, as Guidi says, by a manumitted slave who has no heir, in order to leave his estate to his manumitter and thereby frustrate the claims of the Church and of the State (7/305).
10. Gloss: "if despite his madness he draws up a will as prescribed by the [Holy] Books, it shall be held valid."
11. Gloss: "if they draw a will without observing the provisions of the [Holy] Books."
12. The Arabic text was misunderstood at this point. It does not deal with the "mad and the demented," but with the "indolent and the dissolute." Regarding the demented, minors, etc., the Arabic text says that only that portion of their will approved and ratified by the guardian is valid (3/305).
13. *Tutor testamentarius*, Inst. I, 13, 3.
14. This deals with the *tutela legitima (legitima agnatum tutela)*, Inst. I, 15, 1.
15. *Tutor dativus (tutela a magistratu dativa)*, Inst. I, 20, pr.
16. Following POEFNM 381-3.
17. According to the traditional interpretation this ለዋናው ለተቀባይ ሰው "the one appointed under him," is the ተቋማዊ "accountant," (6/306). Guidi says that in the Arabic version there is no mention of this person. It only says that the guardian may not sell at any but the current price, *ibid.*
18. POEFNM 382-1 says: ገበያዊ ደረሰም ሰዋጋው "according to the price given in the market." The Arabic text also says "according to the price current at the given time and place" (7/306).
19. Gloss: "the property which was in deposit must be lent upon guaranty."
20. That is, if the borrower and the deposittee agree on a suitable pledge or guaranty. The Arabic text says that the guardian shall not loan out the ward's property unless he is obliged to give it away in deposit because he must set out on a journey. In this case it is better to give it as a loan than to give it in deposit if the borrower is as trustworthy as the deposittee (4/307).

in him. A borrower has a guarantor for any [unforeseen] eventuality, while the one to whom deposit is given for custody does not.

If a dispute arises between the ward and the guardian, the guardian's word shall be accepted unless the ward produces a reliable witness. If the person appointed guardian states that he used the property [entrusted to him] for the ward's benefit or that it was lost while in his hands, but not through negligence, his word shall be accepted; but if he says that he gave the ward money after the ward was released from his guardianship,²¹ his statement shall not be accepted unless he produces a reliable witness.

A guardian must spend for his ward as do others whose life is comparable to that of his ward, and in proportion to his ward's substance. A guardian must not deprive his ward of the necessities of life, such as food, dress, dwelling, [and for young persons], marriage in due time and training in a manual or scientific profession. Similarly, if the ward is poor, the guardian shall spend according to his means, as [he would for] his son, nephew, wife, brother or servants.²²

The magistrate must appoint an administrator for one who has contracted a loan.²³ The latter may not dispose of the property which is under administration except for things necessary for life; it is evident that the duration of the administration is until such time as he repays what he borrowed. If the borrower admits having contracted a loan with another while his property was under administration, there shall be no payment of the second debt during the period of administration, but the second creditor shall be paid after the borrower pays the debt for which he was under administration.²⁴

Guardianship is removed when sufficient reasons for removal [are shown], as when the ward, having become mature, wise, and free,²⁵ asks the judge to remove the guardianship from him and the people bear witness that he is capable of administering his affairs and property. Guardianship must be constituted before witnesses in order to avoid law-suits involving [the position of] the guardian.²⁶ The provision regarding the duration of the guardianship shall be written down.²⁷ Similarly, witnesses must be produced for its removal, and [the causes for] removal must be shown publicly to the magistrate so that he may annul their agreement,²⁸ and an order must be written to fix the time for removal of the guardianship.

21. Gloss: "after he left the duty of guardianship."
22. As in POEFNM 382-3, this may also be understood as saying that if the guardian is poor, the ward shall spend of his own for the guardian as he would spend for his son, nephew, wife, etc. The Arabic text says that the guardian must provide the necessities of life for those (e.g., wife, children, etc.) the ward must provide for (2/308).
23. This paragraph refers to the administration of property under attachment, and possibly is misplaced.
24. The Arabic text says that the judge must put one who has incurred debts, under the administration of another, and must not give him power to dispose of his money unless it is for the things strictly necessary for life, until he pays his debt (3/308).
25. ገደብ "free," is ራሱን የቻለ "one who is self-supporting," POEFNM 383-1.
26. A dispute which involves the guardian's contention that he was appointed as such against the ward's denial.
27. According to POEFNM 383-1, the date of the establishment of the guardianship shall be written down.
28. The Ge'ez text says ይረገጥ from እንደገና: "to be confirmed," but it is commonly read as ይረገጥ from ተረጋግጦ: "to be annulled," POEFNM 383-2.

If a dispute regarding the [ward's] property arises between the tutor and guardian,²⁹ one must adjudicate between them [to see] whether the guardian has maladministered, or [rather], the tutor has spent more than was consumed with the knowledge of the guardian. If something was lost without malice, no one is liable. But if the tutor has maladministered [the ward's property], the guardian must sue him for what he has done.

If possible the tutor must provide for himself; if he cannot, he shall be provided with the necessities of life from the property [of the ward], until the ward becomes a young man. And these necessities — food, dress, and dwelling — are forthcoming until the ward reaches [the age of] marriage and learns a trade. One ought to provide properly for a good tutor since he perfects [the ward's] will,³⁰ as [if he were] the good ward's father, mother, brother or servant. A good tutor must be wise and must guard [the ward's property]. But he is not entitled to dispose of or to administer the known property without the guardian appointed over it. The tutor must manage the house³¹ after the ward has grown up and acquired other known property. During his lifetime, the tutor shall do only what is necessary and sufficient for life; the guardian shall not lend anything without the knowledge of the tutor. If both the guardian and the tutor give something out on loan, they must recover it in due time; they must not wait until the ward attains majority and reason, for it is not advantageous for the ward to claim [his property] if his guardian is not there³² to testify about the properties over which he was appointed administrator, before witnesses and in the presence of the tutor. As is stated [above], the tutor shall not go far [from the ward] during his lifetime. When the tutor is removed, witnesses must be produced and the judge must be given notice of the removal, so that it may be confirmed. And the tutor shall command in everything until the ward attains majority.

In the canons of the Kings it is written: "It is proper that Christians, in order to please God, be pious towards their parents, grandparents, paternal uncles, paternal aunts, maternal uncles and maternal aunts. And if any of them is afflicted by sickness or by scarcity of intelligence, or if misery befalls him, they must take over his duties, be they important or small;³³ the same help must they also devote to their women, servants and friends."³⁴ And this is as it should be, because it is the Apostle who said: "The one who has relatives and does not care to benefit them, has denied the faith and is worse than an unbeliever."³⁵

29. From this point onward the protection of the ward is shared between the ሐገጊ፣ and the መጋቢ፣. The ሐገጊ፣ is mainly concerned with the education of the ward, hence ሐገጊ፣ is translated here as "tutor." መጋቢ፣ translated here as "guardian," also connotes the ገዳይ-ቤተ-ም፣ the one concerned with the administration of the ward's properties (2/309). Compare n.1, above.
30. That is, since he shapes the will or the intelligence of the ward by giving him education (3/309.)
31. POEFNM 384-1 comments: ቀላፍ፣ መገን፣ ለለባት፣ = "he must keep the key [to the ward's house]."
32. When the ward attains majority, the guardian and the tutor may be dismissed from their positions and thus may not be available to testify regarding the ward's claim. Hence the necessity of collecting anything given on credit before the ward attains majority.
33. These "duties," offices, or functions may be of great consequence, as are those of the priesthood, or of little importance, as is the case of going to war, POEFNM 384-3.
34. Gloss: "the spiritual relatives by baptism," that is, godfathers and godmothers. See also POEFNM 384-3.
35. I Tim. 5, 8.

CHAPTER XXXIII

SALE, PURCHASE, AND RELATED MATTERS

This chapter is divided into seven sections [taken] from Abtelis 14, from the canons of the Kings [Book] 2, MAK 26, 27, 28, 32, 40, 41, and what has been added to these.¹

Section I.

A purchase is not valid unless the seller and buyer may dispose of their own property — unless they make an agreement with knowledge and are not subject to guardianship.

[A contract of] purchase and sale is [completed only by the act of giving on the part of the seller who owns [the object] and of receiving on the part of the buyer, without violence.² They shall not complete their contract unless another person acceptable to both is present, [even] if this person has not made the estimate.³ And if one of them agrees [to the proposed terms of contract] the consent of the other shall conclude it. If he agrees, he shall perform [the contract]; if not, let the proposed terms be destroyed. Neither the giving of an object on the part of the seller nor the receiving of it on the part of the buyer shall take place if they part before reaching an agreement on the price; for [the conclusion of a contract of sale] depends on the consent of both seller and buyer. In the sale of objects which are not present, a contract made in reliance on [another's] testimony is of no effect: nor is the consent given therein. But if the quality of the object is known, the sale is consummated.⁴ If not, the buyer must either give his consent, by saying "Yes," or [refuse], making [the proposal] of no effect.

The buyer takes [possession of] a movable object whether he takes the object he bought with him or the seller promises to send it after him, as in the case of beasts, slaves, edible and potable objects, clothing, timber, valuable metals, objects which pass from hand to hand like pearls, objects made by goldsmiths and similar items of jewelry. [Regarding immovables, such as] fields, gardens, and lands, the purchaser must declare that he knows them well.⁵

1. The reference may be also to the *AC* , "assignment," see the end of this chapter. The Arabic text says: "... and that for which the analogy of this is followed" (4/311).
2. The NLM gloss says: *٩٤٧٢٧٢* (from the verb *٧٢٧٢* , "to force") "without forcing," "without using violence." *٧٢٧٢* means also the act of a buyer who drives other buyers away so as not to have competitors and thus to be able to buy on his own terms, without giving the seller an alternative, cf. Guidi, *Vocabolario Americo-Italiano* (Roma, Istituto per l'Oriente, 1935) c. 731.
3. Gloss: "even if he has not made the estimate." The reference is to the middleman, who without making any estimate of the price of the object for sale, strikes the average price, as, e.g., if the buyer offers to buy at twenty dinars and the seller asks for thirty dinars, the middleman may fix the price at twenty-five (7/311).
4. Arabic text: "One may make an agreement without actually seeing the object, on a mere description of it. If the description is exact, the contract is concluded" (1/312).
5. The Arabic version says that one takes possession of a movable by actually taking it along with him — by receiving in one's hand objects that pass from hand to hand, such as necklaces. One takes possession of an immovable, like a field, by receiving an exact description of it and by declaring that one has full knowledge of it (4/312).

Some contracts of sale and purchase are made in writing,⁶ and some without writing. A written contract in the possession of the buyer is valid if the document was attested by two, three, or more witnesses, and written by one of the witnesses, the seller, or a scribe who has been given the price for writing.⁷ The contract should specify the agreement on the sale and [other related] terms, the object for sale, the amount of the price, whether the price is to be paid immediately, and the date of payment, if it is on credit.

A contract made without writing may be concluded either with or without payment of earnest. The receiving of earnest by the seller from the hand of the buyer brings about the conclusion of a contract of sale and purchase. If the buyer rescinds the sale, the seller keeps the earnest;⁸ if the seller rescinds, he must pay double the earnest he received, [that is,] he shall repay twice the amount he received. If an object to be sold for [cash] passes from the seller's hand to the buyer's, the contract is concluded; the consummation of the sale is the receiving of the object by the buyer and the payment of the price to the seller.⁹ If the sale is on credit, [that is, if the contract of sale is] not yet consummated, the buyer shall not dissipate the object until the will of the seller is satisfied and their agreement is fulfilled, that is, until the contract they concluded with full consent has been performed.¹⁰

Changing the type or value [of coins agreed upon] is not allowed.¹¹ However, the [value of having a particular type] of coin is not the same as the [value of having a particular] value in coin;¹² one must first know the coin to be used in order to ascertain its type and weight; if [he is to pay] with gold dinars [he shall say] "twenty large or small [dinars], Egyptian or Tyrus dinars," [as the case may be]. When dealing with silver coins [he shall say] "unalloyed or mixed, written in Nazareth," as is said in the [Holy] Book.¹³ If they disagree on the question [of rate of exchange], the price used by the country's money-changers, especially if

6. *Scripture conficiuntur*, Inst. III, 23, pr.
7. For ጽሕፈተ ግድት : "writing of the price," read ግድት ጽሕፈት : "price for writing." POEFNM 387-3. The Arabic text reads: "... followed by the writing of the seller" (1/313).
8. The reference is to the penal forfeiture of the *arra*, Inst. III, 23, pr.
9. *Emptio perfecta*, Inst. III, 23, pr.
10. The POEFNM interpretation, 386-1, has been adhered to here. According to the gloss in NLM the terms ተገያጢ : "buyer," and ሠያጢ : "seller," should be reversed and the text should run: "The one who sells something subject to the buyer's final approval shall not spend what he received from the buyer until the buyer gives his final word." The Arabic text says that the buyer does not take possession of the object bought nor can he dispose of it until the seller makes his choice (1/314).
11. One should not pay with one type of coin instead of another. If, for instance, payment must be made in dollar coins, the buyer should not pay in francs even if both are of the same value. Moreover, one cannot give coin of minor value, as, for example, if one promised to pay in unalloyed silver coins, he cannot pay in base silver coins (2/314); see also the gloss in NLM.
12. This means that paying in another type of coin does not entail as much loss as a difference in value does. See the gloss in NLM. The Arabic text says that in a contract of sale, knowing the value of the thing for sale, though advisable, is not a mandatory condition for its validity (3/314).
13. The name Nazareth is a misnomer for the Arabic "Nasrat" — a particular type of coin. The interpretation given to the phrase "written in Nazareth" is, however, that one must also specify the country of origin of the silver coins, gloss to NLM; see also (5/314). The phrase በከፍ ለበወሐ ምጽሐፍ : "as is said in the [Holy] Book," is absent in the Arabic version, *ibid*. If one takes the phrase as in the above, it refers, it is said, to Mt. 22, 19. But an alternative interpretation says that it refers to the inscription engraved on the coins; hence, the phrase should read: "as attested by the inscription on them" POEFNM 387-3.

testified to by the inhabitants of the country, shall prevail.¹⁴ But if the value of silver [they have] is not equal [to that used in the country], or if the silver is of a different type, the sale and purchase shall not be performed until the value of the silver is ascertained.

The seller must be precise and specify whether he is willing to sell both the land and its fruits, or the land without its fruits, or its fruits only. So also for the trees. If the terms of the contract entitle the buyer to an enclosed plot of land, but say nothing about the trees therein, let the buyer enter the enclosure and build [a house];¹⁵ and let this and similar things be as is usual among the people.¹⁶ But the parties must know the object which is the subject of the contract of sale.¹⁷ If a plant with unripe fruits is sold, the buyer shall not be obliged to transplant it [to his land], nor shall he be prevented from watering it; the parties' agreement to leave it and water it there, or to transfer it,¹⁸ is valid.

Anything that can be measured by capacity or length or that can be weighed with a balance must be sold or bought openly,¹⁹ [because] what can be weighed and what can be measured by cubit or capacity is preferable.²⁰ If one buys a piece [of cloth for] one dirham per cubit, he may buy the entire piece, or as much he wishes, at the rate of a dirham per cubit. If what he buys is 100 cubits, he shall pay 100 darahim. If the piece measures less than 100 cubits, he may do either of the following: if he wishes and the seller agrees, he may buy it all at the rate of one dirham per cubit; otherwise, he may annul the contract. If the piece is more [than 100 cubits long], their wish shall govern the part exceeding 100 cubits.

If one sees something which belongs to him being sold by others and keeps quiet, despite the fact that he could prevent them, it is as if he sold it himself. The slave may buy [anything] but all that he buys must go to his master.

Section II.

If the thing for sale is spoiled before the sale is completed, [one must consider] whether the object was in the hands of the buyer or not. If it is the buyer who has spoiled the object, he must keep it and pay to the seller the price agreed upon.²¹ But if another has spoiled the object, he shall pay on the buyer's behalf and the buyer may either cancel the contract or keep it in effect; [if the buyer cancels the contract,] the seller may claim its price from the person who spoiled the object. If the object sold is destroyed in whole or in part after the sale is perfected, it belongs to the buyer and he must give the seller its price,

14. Gloss in NLM: "[according to] the testimony [of the country's inhabitants]."

15. The NLM gloss says ገብቶ፣ ይቀረጽ፣ "let the buyer enter and cut"; more explicitly, the POEFNM 388-2 says የገዛት፣ ብው፣ እንዲሁት፣ ቀርጦ፣ ከዚያው፣ ቤት፣ ይሰራ፣ "let the buyer cut the trees and build his house on that place."

16. One can only guess at the meaning behind this phrase. One possible interpretation is that it refers to disputes that might arise regarding trees and similar things attached to the land for which no explicit provision was made. In that case the dispute should be settled in accordance with the testimony of witnesses present when the contract was concluded, or in accordance with custom.

17. The Arabic text says that it is better to specify clearly what is the object of a contract (6/315)

18. That is, after the fruits have ripened.

19. Arabic text: "... by an approximation" (2/316). With regard to selling or buying "openly," the sense is that what can be weighed or measured can be bought or sold by fixing the price per unit of weight or measure clearly, *ibid.*

20. መዳላው፣ "weight," is to be read, ዘይደለው፣ "what can be weighed," POEFNM 388-3.

21. In this case the sale is not perfected, but is presumed that the object is in the hands of the buyer for trial.

even if it is destroyed the day he bought it.²² If the object sold is a slave and some part of his body, such as his leg, hand, or eye, is maimed; or if it is a house which is burned down totally or partially; or if it is land²³ which is flooded completely or in part, and consequently some part of it is eroded or washed away, or the house on it [collapses] and the trees fall down; or if other events such as this occur: then, if the seller is not guilty of any fraud, the object sold belongs to the buyer and the seller incurs no liability.²⁴ Similarly, whatever accompanies the object sold, if it is of the same kind and value as that object, belongs to the buyer instead of the seller.²⁵

If a dispute involving rescission [of the contract] arises,²⁶ the word of the seller given on oath should be accepted; and if the dispute is about an additional amount [claimed to be due],²⁷ the word of the buyer given on oath should be accepted, until the other of them produces a reliable witness and judgment can be given on the basis of his testimony.

Section III.

The seller, if he wishes, shall sell the object to the buyer by saying: "I, A, have sold in the days of B²⁸ (a specified object) for a price agreed upon by C."²⁹ The sale is consummated when the seller is satisfied,³⁰ and the buyer may then dispose of the object.

The seller must give the buyer three days to put the object to trial, or more than three days if the object will not spoil in a short time.³¹ The price of sale shall remain with the seller during the period of trial. But he shall not dispose of it without the permission of the buyer. If the buyer allows the seller to use the money, or does not hinder him from such use, [the period of] trial given by the seller is over and the seller may dispose of the price.³² The contract is cancelled if a [living] object which was on trial dies.

22. The *emptio* in this case is *perfecta* and consequently the risk, *periculum rei venditae*, is transferred to the buyer, *ad emptorem pertinet (res perit domino)*, Inst. III, 23, 3.
23. ሀገር : "country," in this context means ቀድሮ : "land," NLM gloss.
24. Inst. III, 23, 3.
25. To give an illustration, the POEFNM 389-3 says that the seller might have sold his cow under the impression that it was barren while in fact such was not the case, and the cow was pregnant. Then the fetus, the thing in excess, goes to the buyer.
26. Gloss: "if the seller says: 'I have not sold him anything.'"
27. Gloss: "if the seller says: 'I have sold him (something) but ...'" In the first instance (see the preceding note), the question is whether a contract of sale was concluded or not, while in the second the dispute seems to arise out of the price to be paid, since the seller admits the sale, but demands a higher price.
28. "B being governor or judge of (a specified place)," POEFNM 390-1.
29. በግዛት ላይ might mean any of the following: (I) "for the price for which I sold (a specified) cow"; (II) "for the price for which C has sold his cow"; (III) for the price which D (another) buyer has paid," POEFNM 390-1 and (4/317).
30. When the seller is paid.
31. Arabic text: "A sale on trial takes place if the seller says to the buyer: 'You will pay so much for the object if it pleases you after a definite period of time.' The sale is concluded after the period of trial is over, when they make a [final] contract, or if the buyer keeps the object" (7/317). The reference, though distorted in the Ge'ez text, is to the *pactum displicentiae*, a sale on trial or approval. The formula, "If the objects pleases you after a definite time," corresponds to the Roman "Si Stichus intra certum diem tibi placuerit, erit tibi emptus aureis tor," Inst. III, 23, 4; Dig. XVIII, 5, 6.
32. The Arabic text says that if the seller asks the buyer to allow him to use the object on trial and the buyer refuses, the latter loses his option. Thus, it means that he himself wants to buy the object; he then must pay the price (1/318).

If one buys something believing that it possesses some special qualifications, but this special quality is missing — if, for instance, he bought a slave believing him to be skilled although in fact he was not — let the matter be settled according to the choice of the buyer; he may either keep him or return him. Similarly, if someone buys something which neither he himself nor his mandatary has seen, let him [take it or refuse it], as he chooses. If it is sufficient for him to see only a sample, as in the case of oil, wheat, or rolls of cloth, he may buy the rest on that basis, without seeing it. If a defect is discovered before the sale is perfected, but the seller in making the contract was unaware of it, the buyer may either take or refuse it, as he chooses. However, he may not buy it at a reduced [price] unless the seller agrees. Whatever necessitates a reduction of price according to the custom of traders amounts to a defect,³³ such as a slave's thieving or habit of running away or of wetting his bed, or his madness, or leprosy of the hidden parts of the body, or his suffering from a permanent affliction of the eyes, or from a disabling sickness.

If a seller [knowingly] sells a slave suffering from any of these defects, he must pay. If a seller knowingly sells a beast with some defect,³⁴ such as one which is possessed by the devil³⁵ or is mad,³⁶ and has not informed the buyer [of the defect] it is said that the debt is upon him. As for the one who sells a slave knowing that he is a thief, mad, or demented, but does not inform the buyer of the slave's conduct — especially if during the bargaining he said that the slave had no defect — the buyer has the right to give [the slave] back within six months, and to claim any damage done to his house.³⁷ But if the buyer keeps procrastinating and the six months elapse, he has no action against the seller. If, because he did not watch them carefully, a slave or beast flees before the six months are over, he shall pay its price to the seller. The seller does not have to bring back the slave, pay for the things he damaged, give back the price, or search for him in case the slave flees, if he informed the buyer, when he sold him the slave, that the latter was a bad one, and that he would not come back to his master once he fled.

If a defect appears in the object after its transferral to the buyer, he may not sue the seller and tell him to retake the object, but the seller must agree to a reduction of price for the defect which existed before the sale.³⁸ If a dispute arises between them, and the defect is such that it can be remedied,³⁹ the word of the seller, given on oath, shall be accepted. Nothing shall be returned to the buyer⁴⁰ if he manumitted the slave [after he discovered the defect], or if the slave died while he was in the buyer's possession. Similarly nothing shall be returned to the buyer if he gave the slave as alms, if he gave him [to another], or if he sold him. A buyer may not return to the seller, invoking their defects, a slave who was bought from an infidel and then baptized or a Christian female slave whom he married or gave away in marriage.

33. Arabic text: "Whatever implies a price lower than normal is considered as a defect" (1/319).

34. Gloss: "a beast which flees."

35. Gloss: "an ox which has a disposition to gore."

36. Gloss: "a malingering ox."

37. *Actio redhibitoria*, Dig. XXI, 1, *passim*.

38. *Actio quanti minoris*, Dig. XXI, 1, 31.16.

39. Gloss: "a defect which does not obstruct work." The reference is probably to a defect which does not affect the value of the object, such as *vulnusculum aut levis febricula*, Dig. XXI, 1, 1.8.

40. Arabic version: "No one may bring an action against him," that is, against the seller. (5/320).

If a seller has cloth which he sells, [and someone buys the cloth] and then dyes it, makes a shirt from it, or sews it, the seller is not responsible for any defect in it if the buyer wants to give it back.⁴¹

And all similar cases merit the same judgment. If the buyer was aware of a previous defect in the object, and could have sued the seller for this defect but failed to do so, his right to bring an action is cut off.

The first buyer is not liable if, unaware of any defect, he bought a slave and later sold him to another person who discovered the defect and sued him for it; but he must procure reliable witnesses [who testify that he was ignorant of the defect], for his statement alone is not sufficient. The second buyer has an action against the first seller.

If someone makes a contract with another concerning anything, [but acts] without the intervention of a judge, he incurs no debt.⁴² Any object whose defect was apparent at the time of sale⁴³ entails no debt for that defect, whether the seller has specified all the defects in detail or not.

Section IV. Things which may not be bought and sold:

The sale of free persons,⁴⁴ of Christians to infidels, of relatives, or of [salaried] servants is absolutely forbidden. Nor is it allowed to sell a charitable legacy, or, in particular, a slave not owned previously.⁴⁵ No one shall sell a deposit entrusted to his custody, or anything which cannot be delivered to the buyer, such as a fugitive slave, a fish in the river, a free bird, or an antelope wandering in the desert. Never shall people buy or sell a servant who flees; nor the fisherman, fish which are [still] in the sea; nor the fowler, free-flying birds; nor the hunter, the antelope of the desert.⁴⁶ One shall not purchase or exchange forbidden things, such as dead [animals],⁴⁷ blood, meat half-eaten by animals, things slain as a sacrifice to idols, mortally poisonous animals, rapacious animals which are not fit for hunting and offer nothing but harm, such as snakes and lions, and deadly plants and other things which cause death. Useless things, such as reptiles and objects whose price cannot be known at the time [of bargaining, bearing in mind the time between the day] of sale and that on which the price is given, shall not be sold. Nor should one sell something the appearance of which is not known, such as the unborn fetus without his mother, fruit before [its bud] appears, milk which is still in the breast, musk in a bottle, or honey in a vase. Things owned jointly by many people—streets, grasses [growing in a public pasture], or water flowing [through public domain]—shall not be sold unless the latter are removed from their places. One must not sell a pregnant [slave] without including her unborn child, nor a mother who still nurses her baby without the child, lest he perish. One must neither buy [for a slave]

41. The last phrase, Guidi says, is lacking in the Arabic text (6/320).

42. The POEFNM 393-1 interprets this passage as follows: "If one enters a contract on any object without the intervention of the judge, he has no liability should he breach the contract."

43. Defects which *signis quibusdam solent demonstrare*, Dig. XXI, 1, 1.6. Arabic text: "...and the one who during the sale declares himself not responsible for any defect" (2/321).

44. The gloss refers to the manumitted slave who has committed no fault which might bring about condemnation to his former state of slavery (Sec Chap. XXXI); but the reference is to the nullity of a sale of something not in commerce, such as a free man.

45. POEFNM 393-2: "A slave not owned by ones parents or a slave who became such by his own will."

46. Gloss: "he shall not say before selling, 'I have sold'"; that is, the fisherman shall not sell the fish which he has not yet caught, etc., because the sale of non-existent things is void.

47. Animals that are not slain ritually, POEFNM 392-3.

one who must be condemned to death nor give weapons to plunderers, such as a knife to a thief, a sledge hammer⁴⁸ to a robber, or a golden seal to an unauthorized person.

No one may sell a prohibited object together with an object which may be sold, as, for instance, selling two persons as slaves although in fact one of them is a free man. The buyer may choose [to keep] the person who was in fact a slave,⁴⁹ but the seller must return to the buyer the price of the one who could not be sold. The one who buys something in order to give it as a legacy or as alms must give it away as soon as he can, either by making the legacy or by giving it as alms, unless he unexpectedly loses his wealth and becomes poor.

If someone sells a piece of land he does not own, and the buyer builds [a house] on it, the rightful owner may collect its price either from the fraudulent [seller] or from the buyer;⁵⁰ or, if he wishes, he may take for himself what is [built] on the land, estimating the price the land would have fetched before the building on it and [paying] the value [added] after [the building on it].⁵¹ And the buyer⁵² may choose either to agree to this⁵³ or to remove the new thing he has built; he may reclaim the price [he paid] from the fraudulent seller. However, the law is that no one may buy from thieves.

A testamentary executor must not buy anything from the property of the orphans. The same rule applies to a mandatary. A public official is permitted to buy neither movable nor immovable property from his superior or from his subordinate, whether directly or through an intermediary,⁵⁴ unless he pays the established price and the seller consents to the sale. If someone acts contrary to this rule, let him be deprived of what he bought, forfeiting also what he paid; the whole shall be put aside for charitable use.⁵⁵

One shall not take possession of objects bought on an invalid condition,⁵⁶ for example, where a man has said: "When this cow gets a calf and its calf begets another calf, I will sell you the calf which will be born to it"; or "I can sell you this land for fifty [dinars] provided that you sell me your slave for twenty"; or "I can sell you this slave for ten [dinars] if you pay immediately, or for twenty on credit."⁵⁷

Section V. What is to be abstained from,⁵⁸ and what constitutes improper practice in selling and buying:

Whatever causes harm to others is bad, such as separating a woman slave from her child, especially before he attains the required age,⁵⁹ or separating a slave

48. In the Ge'ez text the word used is ፊርፍ : "the handle of the plow" or "the plow" but it is used in the above sense here, POEFNM 394-3.

49. Following, in part, POEFNM 394-3; Arabic text: "The buyer has the choice [of keeping or returning it]" (1/325).

50. In the Ge'ez text it is ሠያጢ : "the seller," but it should be ተግያጢ : "the buyer," POEFNM 395-1.

51. From the assessed price of the building he shall deduct the price of the land, and shall pay the price of the building, POEFNM 395-1.

52. In the text it is ሠያጢ : "the seller," but it has been corrected as ተግያጢ : "the buyer" (text/325).

53. That is, to take the price of the building.

54. Gloss: "middleman."

55. Arabic text: "...for the public welfare" (1/324).

56. Arabic text: "One may not subordinate the sale to an unreasonable condition ..." (2/324).

57. አራጣ : ንግድ : "because it is usury," POEFNM 396-1.

58. Literally: "What is repugnant to be done."

59. Gloss: "the period of nursing is two years."

from his brother,⁶⁰ or separating a slave from his wife and child. Similarly, it is forbidden to sell a slave accustomed to the usages of a country to a foreigner,⁶¹ unless the slave gives his consent. It is forbidden to say to someone who bought [from another] on condition of trial: "Cancel the contract you have made [with A], and I will sell it to you at a cheaper price"; or "... at the same price he offered to you, and my goods are better than his." It is also forbidden to say to a man who is going out to sell something he owns for profit: "Do not sell it, for I will sell it for you little by little at a higher price."⁶² Nor must one buy anything on Sundays, on the Lord's feasts and on the feasts of Our Lady Mary; but if the contract has already been made, the purchase is valid.⁶³

If a buyer, finding a new roll of woolen cloth, is bargaining with the seller about its price, it is improper for him to bring another buyer⁶⁴ who offers to buy it at a price lower than what is normally charged at the place of sale, or to buy it [at that price]. When the seller discovers this,⁶⁵ he may disregard the offer he made [to the second buyer] and [cancel] the sale. If someone buys something for ten [dinars] and sells it to another through his partner, servant, or friend for twenty [dinars] or less,⁶⁶ the [second] buyer must be told of the addition to the price: he may obtain back [the amount in excess of his seller's cost] or, [if he prefers,] may buy the goods at the price originally charged him. [In any event], the sellers must make known to him the price they fixed by fraud.⁶⁷ Whatever involves fraud in sale is bad. And it is forbidden to estimate price unjustly, to forbid what is permitted, or to obstruct the purchase of basic necessities like food, drink, clothing, or shelter so as to greatly increase their price.⁶⁸

60. Gloss: "if both are for sale."
61. Gloss: "especially if the buyer belongs to another faith and speaks another language."
62. The POEFNM 396-3, followed here, gives the example of the ቢጋግኛ: "the butcher" who offers himself to sell meat at retail on another's behalf. His act is forbidden because the meat might be spoiled should none come to buy it, and this obviously is to the prejudice of the owner of the meat. But the approximate meaning must be that it is forbidden to buy and to store goods so as to sell them at retail at a higher cost (6/324).
63. Gloss: "the purchase is valid if the contract was made in good faith," that is, without awareness that it was a feast day.
64. This "another buyer" is called the ገርጋሪ: in the POEFNM 397-1, see n.1, *supra*. He is a buyer who approaches the seller with fraudulent intentions.
65. That is, that the market is higher than the fraudulent buyer offers to him.
66. But always at a price higher than the cost price, for instance at fifteen dinars.
67. This passage is not against making profit in business. The POEFNM 397-2 even quotes the proverb ላይተኛ ለይረር፣ ላያተር፣ ለይነገድ: "One who can not make [learned] comments should not be a judge and one unable to make profit should not be a businessman." The profit, however, must be made honestly; and in connection with this the POEFNM 397-2 goes on to say ወገራ ገዝተ ገንደር [በያተር፣] ነው ለገጽ ጧት ገዝተ ግታ ግትረፍስ ለገደስርቶ ለገደትጊያ ያለ ነው: "It is permissible to make profit on something bought in Wogera and sold in Gondar (two marketing places with a certain distance between them) but it is to be considered as theft and robbery to make profit on something bought in the morning and sold in the evening." The Arabic text is quite different: "It is dishonest if one goes to another who is carrying his goods to the market and informs him that his merchandise stands no chance of being sold, and then buys it from him; or if he lets somebody else buy it at a price lower than what it is actually worth. If the seller becomes aware [of the trick] he may either recover his merchandise or let it go. It is also forbidden to exaggerate the price of something one bought, such as buying an object for ten [dinars] and feigning to sell it to a companion, servant or friend for twenty or less dinars, so that they spread the word among people who really intend to buy and come to buy from him (the conniver) at the fictitious price, or informing a prospective buyer of the price fixed fraudulently" (6/325).
68. The Arabic text says that one must not store and withhold from sale such indispensable things as food in order to create scarcity and increase the price (2/326).

Section VI.

The contract which has been consented to is binding. It is improper to reduce or increase the price in violation of the contract. If a defect is found in the object for sale, it may be sold at a lower price than agreed to originally, as if there were a different contract of purchase. If a part of the object for sale is missing, the rest may be bought at a lower price by deducting the proportionate price of the missing part. The contract is annulled if the object is completely destroyed, but if it is destroyed only partially, the contract is still in force [for the remaining part].

If gold or silver is found in a house which has been sold, hidden from its [former] owner at the spot where it was first buried, it shall be given back to the original owner.⁶⁹

Section VII. Assignment [of debt]:

An assignment [of debt] is not valid without the consent of the assignor and the debtor, but the consent of the assignee is not necessary.⁷⁰ If an assignment is made without the consent of the debtor, it will result in a dispute between the assignee and the debtor, since an assignment is only good if it is made for the amount assigned with agreement and good will. The assignor shall not force the debtor to give his consent if the latter has no money.⁷¹ If the assignor and the debtor agree, the assignment is made with the consent of the latter, in proportion to the amount he has or agrees [to give]. It shall be part of the agreement whether he shall pay the debt immediately or after a definite period of time. Such an assignment is certainly valid. If the assignment is properly made, all the assignor's obligations devolve upon the debtor.⁷²

If a seller assigns his accounts so that money passes directly from a buyer to the seller's assignee, and if then the buyer returns [the goods he bought] to the seller, the money given to the assignee becomes a debt of the seller [to the buyer]. If the buyer returns [a part] of what he bought, because of some defect, so that he no longer has goods in proportion to the money he gave the assignee, the seller must replace [the defective goods].

69. Gloss: "if the owner used to tell others of the buried treasure." The POEFNM 398-1 explains that according to the 318 Fathers (that is, according to the Fetha Nagast), if the owner had mentioned the existence of the treasure to the buyer and the buyer finds it, he shall give it to the owner. But if he had made no mention of it, the treasure goes to the buyer, pursuant to the words of the Lord in the Gospel, Mt. 13, 44.
70. The Arabic text says that an assignment is valid if it was made with the consent of the assignor and the assignee, but the consent of the debtor is not necessary (1/327).
71. Or, according to the gloss, the assignor shall not force the debtor to give him clothes and food, if the debtor has no money; neither shall he assign to another more than the debt he owes the assignee.
72. Gloss: "the assignee shall not come back to the assignor, who exonerates himself by saying to the assignee: $\lambda\gamma\gamma\lambda\upsilon\omega\epsilon\lambda\lambda\iota\lambda\iota$: $\lambda\gamma\gamma\omega\alpha\lambda\iota$: 'Do not come back to me henceforth.'" The Arabic counterpart of this and the preceding passages runs: "The consent of the debtor is not necessary if he is able to pay the assignor what he owes him, and if the assignee does not make the consent of the debtor a condition of the assignment. But the consent of the debtor is necessary if he cannot pay the assignor [immediately] or if the assignee makes the consent of the debtor a condition of the assignment. The assignment is valid to the extent of the debt and the amount the debtor agrees to pay the assignee. Once the assignment is made with the requisite consent, the assignee has an action against the debtor and none against the assignor" (2/327).

CHAPTER XXXIV

PARTNERSHIP

From Abtelis 19, 20, and other [paragraphs].

A partnership is formed by word, by work and by service,¹ among all those who are suited for it. A partnership may be formed to do business, to spend, and to deal with affairs that yield profit. It may also be formed by those who are not equal in wealth, since the poor partner, who has no money, can satisfy his needs by watching over the goods carefully, and [thus] share in the profit.² If their partnership is [formed] by service without specifying what this service consists of,³ it shall be formed of goods acquired by them as a result of trading,⁴ to the exclusion of inheritance, donations, and what is received by will. If there is an agreement between the partners that what they inherit⁵ shall be incorporated in the partnership, they shall not bring into it what was left to them by someone's will. If they agreed not to dissolve the partnership until a certain time, the one who causes its dissolution before that time is liable, unless it was for good cause.⁶ [This is] when the other partner does not carry out [his] obligation under the contract, becomes insane, or dissipates the partnership's money. Any [damage] caused by the laziness or fraud of one of the partners is his sole responsibility. But stolen goods and unforeseen or necessary expenses which do not concern only one of the partners — as do [expenses] for children, relatives, or [personal] debts — concern both [partners], just as they share any loss or any profit.

The partnership does not extend to goods acquired by the partners outside the partnership.⁷ If the contribution made by one of the partners is lost after the establishment of the partnership, the loss is borne not only by him, but by both

1. These are the various kinds of contributions which the partners make in forming a partnership. "Word, work, and service," stands for "funds, skill, and labor." As explained by Guidi, contribution in "word" is made by the partner who contributes money. Contribution in "work" is made by the partner who devotes himself to trading, travelling, etc., on behalf of the partnership. Contribution in "service" is made by the one who takes care of the loading and unloading of goods (2:328); Dig. XVII, 2, 4.
2. Arabic text: "... because the poorer of the two partners compensates for his lack of money by more concentration and toil" (4:328); Dig. XVII, 2, 5.
3. Gloss: "if it is not determined specifically." Arabic text: "If the partnership is simple or general, and not specified [in object] ..." (5:328). The Ge'ez is confused by the translator's misreading of the Arabic term for "not specified" as ብወልእኩት: "by service," which has no sense. *Ibid.* The intended meaning of the Arabic text is that the partnership shall be in goods acquired, etc., if the type of the *societas* is not specified; see the following footnote.
4. That is, if its type is not specified (see the preceding footnote), it is to be considered as a *societas universorum quae ex quaestu veniunt*, that is to say, a partnership that includes only those goods acquired as a result of business transactions, to the exclusion of those acquired from other sources such as inheritance by right, by will, or donations, Dig. XVII, 2, 7.13.
5. That is, what they inherit by right rather than by will.
6. The withdrawing partner is responsible for any damage caused by the untimely dissolution of the partnership brought about by his *renuntiatio*, unless a good cause exists. Inst. III, 25, 4; Dig. XVII, 2, 14.
7. Gloss: "the goods which they acquired outside the partnership shall not be kept together with those of the partnership."

partners. If the sales price or the hire price is received by one of the partners, after [he takes] delivery [of something for trade], it shall be shared by both partners, just as they share loss and profit. The partners shall share the profit or the loss if one of them buys goods [on behalf of the partnership] using other sources, that is, using his own or his partner's money. If one of the partners repairs a house owned jointly, lest it deteriorate, or repairs it with the agreement of his partner, he shall ask his partner to repay him his share of the cost of repair within four months. If the other partner fails to pay within that time despite his request, let it be done as the repairer chooses. If he prefers, he may pursue his claim; if not, let him take the house, after having [first] informed the judge that he is taking possession of his partner's share, in proportion to what is due to him for what he has spent [to repair the house]. The law gives the possession of the house to the one who built it. The debts of the partnership shall be paid before the partnership is dissolved.

As for the immovable goods of the partnership, no partner is allowed to dispose thereof for a purpose different from that of the partnership⁸ unless he has the permission of the other partner or, in case of evident necessity, of the judge. Apart from this, partnership must be in all the goods [owned by the partners], and all partners shall share in any expenses incurred for manual labor. They shall share any work⁹ [equally or one partner may have] a larger share in the profits on the basis of the capital and work [he contributed]; this [shall be] according to their agreement.¹⁰ Anyone may join the partnership by contributing all of his property or a part of it. A partner may not dispose of the partnership's goods without the other partner, unless the latter allows the former to do so. If there is a provision in the contract that one of the partners shall administer the property of the partnership [alone], to the exclusion of a determined part which he may administer only with the consent of the other partners, [let it be so].¹¹ If there is an agreement between two, three or more partners that one of them is to manage the partnership's property, this may be done. The other partners must not sue him¹² for what he buys or sells, or for what becomes lost or spoiled; nor must they accuse him of fraud, theft or negligence without reliable witnesses.¹³ If one of the partners is dismissed in accordance with the rules of the partnership, the others stay in the partnership until they too are dismissed.¹⁴

8. Arabic text: "As for the immovable goods, none of the partners may dispose of the other partner's share" (1-2/330).
9. Gloss: "the profit is in common." If, then, $\text{†}\text{†}\text{†}\text{†}$: "work," stands for "profit," the passage should read: "They shall share the profit equally."
10. Gloss: "one part, two parts, etc." That is, one shall have one part or two parts from the profit according to his contribution. The Arabic text runs: "It is proper that the share in the profit be equal or unequal in proportion to the capital or the work contributed" (5/330); Dig. XVII, 2, 29.pr.
11. Gloss: "if one of the partners, putting aside a part of the goods, says to the other: 'You must not dispose of these goods without my permission; you may dispose of the rest,' this may be done." But the Arabic text says: "If an agreement has been made that the administration of the partnership's goods be managed by one partner only, the others can do nothing without his permission" (1/331).
12. Arabic text: "If they agree that the partnership be run by two or more of them they may do so. One should not question a partner when he says that he bought or sold something or when he says that he has incurred a loss ..." (2/331).
13. Gloss: "he (the other partner) shall not accuse the managing partner of having wasted the joint substance, without witnesses."
14. Gloss: "the others shall not be dismissed because of one's fault; the one who is condemned to be dismissed shall leave the partnership, but the others shall stay."

If one of the two [partners] dies, becomes insane, is put under the guardianship of another, or is condemned to death, the partnership shall be dissolved.¹⁵ The partnership is also dissolved if the time for which it was established is over;¹⁶ if the capital on which they agreed is exhausted;¹⁷ if an obstacle to the management of the partnership [arises]; if the partners want to dissolve the partnership;¹⁸ if one of the partners demands an accounting¹⁹ [in private] or before a court; or if each partner wants to make profit alone using only his share.

15. *Terminatio ex personis, capitis deminutio*, Gai. III, 152; Dig. XVII, 2, 4.1; Inst. III, 25, 5.
16. Dig. XVII, 2, 1.pr.; *id.*, 2, 65.5.
17. The capital with which the partnership was formed. *terminatio ex rebus*, Dig. XVII, 2, 4.1; *id.*, 2, 63.10.
18. That is, because all the partners have agreed to dissolve it, as the purpose for which it was established has been accomplished, or the agreed time expired; *terminatio ex voluntate*, Dig. XVII, 2, 63.10.
19. *Terminatio ex actione*, Dig. XVII, 2, 63.10; *id.*, 2, 65.pr.

CHAPTER XXXV
COERCION AND DURESS

To compel a man to deny his faith while he believes in it wholeheartedly is absolutely prohibited, as is said in the chapter on martyrs. The one who endures pain for his faith and is killed is a martyr; if he remains faithful and is spared, he is called a faithful witness, since he is a witness; his rank is next to that of the martyrs¹ and his proximity to the rank [of martyrs]² is in proportion to the pain he has borne and his motive in bearing it.

If a man is under compulsion to transgress the law or to do something by which he commits evil actions, killing, or fornication, he must bear that from which there is no fear of losing his life or of having one of the parts of his body spoiled.³ One who wants to have the reward he expects⁴ must accept violence with patience, bearing the affliction which befalls him, and must be careful not to damn his soul. He must persevere in doing good, without letting himself be obstructed. The resistance he offers should be in proportion to the greatness or smallness of the compulsion to sin.⁵ The act of compulsion on the part of the compeller and the [subsequent] transgression of the law are imputable to any person who [in turn] compelled the compeller. If one is compelled under the threat of death to kill a man, he must not yield to it. Neither must he commit fornication, especially if it is a prohibited union.⁶

If a man is compelled [against his will] to [agree to] sell his own property, to buy another's property, to lease his property, to hire another's property, or to confess to another something which is not with him,⁷ he may⁸ either perform [the resulting contract], if he wishes, or refuse [to perform it], if he does not. As for compulsion to give a guaranty,⁹ if the slave he was forced to buy loses something

1. Gloss: "since he has not been proved by death."
2. *גלוּ*: "to it," (the rank of martyrs) may be referred to God ("to Him") and may mean, "and his proximity to God is in proportion to ..." (4/322). POEFNM 402-3 says: "his merits are in proportion to his intention in suffering and to the suffering he has borne."
3. POEFNM 403-1 says: "If it is feared that the compulsion will result in maiming one of the parts of the body or death, one should do as one is bid. This happens where the compulsion emanates from the king. But if there is no fear of such a consequence, one should not give way to the compulsion. This is so where the compulsion emanates from a friend." Guidi refers to another interpretation which says: "One must bear what does not kill the soul, but maims only the body or a part of it"; the Arabic text says: "[If the compulsion is] to transgress the law or to commit a sin (except homicide or fornication), it is preferable to bear that from which one does not fear to lose his soul (life?) and to spoil a part of his body" (6/332).
4. The eternal life.
5. Thus following POEFNM 403-2. Arabic text: "Resistance or giving way in refusal and bearing must be in proportion to the greatness of the transgression." That is, one may give way in unimportant matters, but not in grave sins (1/333).
6. For example, an incestuous union (text/333); POEFNM 403-2 puts it: "especially if it is a prohibited marriage."
7. POEFNM 403-7, "If one is compelled to bear witness on a question regarding which he was not present."
8. Arabic text: "He has an option when he can ...," that is when he is no longer under coercion (3/333).
9. One must read here: "As for the compulsion to buy a slave ..." (5/333).

belonging to him, it is the duty of the one [who forced him to buy the slave] to pay the equivalent value. If the slave flees, the one who exercised the coercion shall bring him back, pay the price of the slave, or replace the slave. If [after he has paid the price or replaced the slave] he later brings the slave who fled to the one who was compelled to buy him, then the latter may choose, either to return the price he took, or to return the slave [given as a replacement], or if he deems him more useful, to retake the former slave. The same holds true if the compelled buyer has sold the slave, or if he has given him away to others and he later comes back. If the compeller manumits, or gives away as charitable legacy or alms the slave bought compulsorily [by another], he must return the price of the slave [to the person forced to buy him]; if [he does] not, the one compelled [to buy the slave] may either charge his price to the account of the compeller and keep reminding him¹⁰ [of his debt] until he becomes rich, or share with him in his act [of charity],¹¹ thus fulfilling a pious work. Otherwise, he is entitled to half ownership, as measured by restitution of the equivalent price. If a person has given a wife to a slave [bought under compulsion], or has given him his daughter to be his wife,¹² [the payment of] the price does not cease [to be required], and the compeller must pay the equivalent price. If one has applied duress to the owner of a female slave, so much so that he [forcibly] buys her from him, and if later he marries her or gives her in marriage to another, the purchase is not annulled and he must complete the equivalent price. If what he bought by force, [whether slave or beast.] dies while it was with him, without any fraud or damage on his part, or if it is stolen from him, he has no obligation to pay its price again.¹³ If one is forced to manumit his slave, to give him away as a charitable legacy or alms, or to have him married, he may choose: if he wishes, he may forgo the price;¹⁴ if not, the one who coerced him must give him the price of the slave.

As for the use of duress, if the one who used duress [to take something] is a rich man, he shall pay five or four times the value [of what he took], as provided in the Mosaic Law.¹⁵ The debt must be on his account.¹⁶ However, if he is unable to restore five or four times the value, but is able to restore double,¹⁷ as provided in Abtelis 39, he must pay double. Failing this, the law provides that the entire object taken, or whatever part of it may be found with the taker,¹⁸ must be taken away from him. If the object taken cannot be found, the one who took it by violence must replace it with a similar object of the same value. [As for the value] if the person from whom an object was taken by duress wishes, [he may be repaid] either in proportion to the value the object taken had at the time it was taken, or [in proportion to the value of the object] at the time he is indemnified through a court's decision, should this be possible for him.

10. Reading פאניפ : "reminding him," instead of עאניפ : "reminding himself" (1/334).
11. In freeing the slave, giving a legacy, or giving alms, all rightly considered pious works.
12. תפניפ : "has contracted a marriage with him," has the above meaning in this context, according to POEFNM 404-2.
13. In the gloss and POEFNM 404-3: "he has no liability to pay double."
14. Gloss: "the price estimated for the slave."
15. The reference seems to be to Ex. 22, 1, ff. See Chapter XLIX, *infra*, at n.1.
16. The glosses say that if one is proved a liar by witnesses after having taken an oath, he must pay five times the value, whereas if he confesses, he will pay only double. Compare Chapter XLIX, *infra* at nn.1-3.
17. Arabic text: "If he can pay five times, as mentioned in Mosaic Law, he must pay it" (1/335).
18. Arabic text: "... from the taker or from the one with whom the object taken is found" (2/335).

As provided by law, the one who takes using duress shall provide a guarantor for what he has taken.¹⁹ If the object taken has been modified by the work of the taker—as by building a house on a field, or by making a new fence or a chair, if the object consisted of timber,²⁰—it becomes the property of the one who took it, but he must pay the price it bore before the modification. If it is a beast, and the taker has fattened it, or a slave, and he has trained it in a trade, the person from whom it was taken may choose: if he wishes, he may claim the price the object would have fetched before the change which the one who took it brought about; or, if he wishes to take the object back, he must pay the cost of fattening the beast or training the slave. Thus, there are two solutions: to agree on the object's original [price] or to be freed from its improvement.²¹ If they do not agree on the price, it shall be fixed according to the word of the person from whom the object was taken accompanied by his oath, provided that it is not contradicted by reliable testimony.

The profit obtained from the object taken — such as rent drawn from it, or the offspring of a beast — shall be taken by the one from whom the object was taken. If the product of the object has perished, because of the fault or fraud of the one who took it by duress, he must pay the equivalent price. If it perished without any fault on his part, he is not responsible. If the thing taken by duress was money, alms must be given for the owner's benefit.²²

The one who tears another's clothing shall pay for the reduction of its value; if the cloth was rendered absolutely useless, he must pay the equivalent price. As for the one who takes a white dress by duress and dyes it, the owner of the dress may choose either to take the price of the dress or to take the dress and pay the price of dying it.

As for a slave, if the master [who took him by duress] trains him to dye, the slave shall give his master²³ whatever he earns by the work of his hands. And if the [new] master manumits the slave because of the wealth he has obtained from his labor, gives him away as a charitable legacy or alms, or gives him a wife, there is [still] no difference between that slave and an object taken by duress in the judgment [to be rendered]: the person from whom he was taken must have the slave's price, which shall be paid in whole by the taker.²⁴ Should the one who took the slave be completely unable to pay, as when he has manumitted the slave or can make a partial payment only, let the owner take whatever is available. And

19. Cf. POEFNM 405-2: "a guarantor who guarantees in proportion to the thing taken."

20. Arabic text: "... if one takes wood and makes a chair of it" (4:335).

21. This is a mere summarization of the preceding passage; if the owner of the object wishes to give it up he shall receive its original price (𐤀𐤓𐤕𐤓𐤕𐤓 in the gloss) and if he wants to take back his object, he shall pay the cost of training, etc. (𐤓𐤕𐤓𐤕𐤓 in the gloss). Arabic text: "There are two other possibilities, either to restore the object in its original condition or to make a gift of the work done" (5/335).

22. Gloss: "if he dies." Accordingly, the passage has the following interpretation: "If the one who has suffered duress dies, it is proper that the profit from the property taken be given in alms, in suffrage for his soul." POEFNM 406-1; Arabic text: "If the thing taken is money it is preferable to give away the profit in alms" (1/336).

23. It is unclear whether this "master" is the one who has taken the slave by duress and trained him or his original master.

24. Arabic text: "... the one who sells, makes donation of, or manumits what he has taken by duress. ... One shall not judge differently between taking by duress and by coercion, except that the coercer must complete the price, and the one who takes using duress must give the whole price" (3:336).

it is proper²⁵ for the one who takes by duress to pay the full price in proportion to what he earns.²⁶ If it is an object which he has altered or given as alms, and its price or half of its price is not found [with him], the one from whom it was taken may either make note of the taker's name in his account-book and suspend the date of payment until he becomes wealthy enough to pay, sharing with him in the object until expiration of the term, or give him the object as alms,²⁷ or if he wishes, take the object back. The purchase is not annulled, and the one who takes by duress must pay the price, even if he has had the slave married or if he himself has married the female slave. If he does not have the price at hand, it shall be fixed by judgment according to what he earns.

25. The Arabic text adds: "... to fix the installment rate ..." (4/337).

26. Read in connection with the preceding footnote: It is proper for the one who takes by duress to pay the full price by installment in proportion to his income.

27. ወ-ሂበ : ጥጥት : "to give alms," may also be understood as: "to let him share with the one who took the object in the merits derived by giving alms, should the taker give the object away as alms," cf. POEFNM 407-1 and (5,337).

CHAPTER XXXVI
LEASE AND LESSOR¹

TS 7, 15, 17, and others.²

One hires something in order to draw benefit [from it] by paying a price. A lease is a contract made verbally for the drawing of benefit upon compensation. Whatever constitutes the price in purchase serves equally well to pay the rent in letting,³ [as long as the letting is for] a profit not prohibited [by the law]. A lease between parties who are entitled to enter a contract of sale is not valid without the consent of the lessee and lessor,⁴ and must be for drawing [reciprocal] benefit. A lessor must know two things about what he hands over [to the lessee]: the benefit he will derive; and, if the lease is for [a limited] time, the duration of the lease.⁵ For example, where a house is leased for dwelling, it is necessary to ascertain the duration [of the lease]; where a beast is leased for riding, [it is necessary to know] the route. If the lease is for work, as in the case of hiring a man to sew a dress, or a beast to transport something, these matters shall be according to the agreement of the parties. An example of what may be leased [without determining duration]⁶ is an Egyptian farmland; it is known that the contract [comes into effect] when the River Nile floods the land, irrigates it, and then recedes during the sowing.⁷

Regarding what is required [in the lease], the lessor must do for the lessee whatever is necessary for the latter to draw benefit [from what is leased], as by showing him the field.⁸ by removing obstacles that hinder enjoyment of the thing leased

1. Gloss: "what is bought is not returned, but what is hired is returned to the owner." This chapter deals with the *locatio - conductio* or the contract of letting and hiring. Inst. III, 42. The technical terminology dealing with *locare-conducere* is ambiguous. The verb ተወሰነ is here used to mean both "to lease" — the act of the lessor — and "to hire" — the act of the lessee (but see Dillmann, *Lexicon Linguae Aethiopicae*, c.972-3) — and ተወሰነ ተወሰነት is used to mean both "leasing" and "hiring." ወሳብ : or ወሳቢ : mean here *locator rei*, "the lessor of the thing" (ወሳብ : also means, perhaps more appropriately, *mercenarius* or *operarius*, that is, the one who sells his services for a consideration, see Dillmann, *id.*, c. 973). The *locator operis*, such as builder, dyer, goldsmith, is called በዓለ : ግብረ : እድ : or መከተገብር = The ተወሳቢ : is the *conductor*, or the lessee. ወሳብ : is *merces*, that is, rent, wages, etc.
2. And other paragraphs from TS.
3. The nature of the *merces*, or rent, is governed by the rules of *emptio-venditio*, purchase and sale, Inst. III, 24, pr. Similarly, the Arabic text says: "What is used as the price in sale may be used as the rent in letting" (3.338).
4. Arabic text: "A contract of lease is valid if made between those for whom purchase would be valid, and is not valid without the consent of ..." (4.338).
5. This means that the lessor must know: a) the object he leases; b) the length of time for which he leases it; and c) the price, POEFNM 407-1. The Arabic text reads: "The advantage to be derived from the object on lease and the rent must be known, and the latter must be such that one can pay it" (5.338).
6. The POEFNM 408-1 says: ተገባይ ተርጉሞ ሊጠቀሙት የሚገባለ : የገብጽ : ምድር : ቢሆን : ነው = "one thing which can be leased without determining the time is an Egyptian farmland."
7. This means that for such a farmland it is not necessary to fix the duration of the lease, since the time of sowing and harvesting is usually known.
8. Showing the location and the boundaries of the field (ዳር፡ድንበሩ፡መሀል፡በገበሩ ፣), POEFNM 408-2. The Arabic text says: "... [the lessor must hand over to the lessee] the key to the house" (2/339).

and the making of profit, or by [providing him with the] necessary beasts. But the implements which the lessee takes for his advantage, such as a pail and the rope on it, must be returned at the end of the lease.

One may not hire forbidden things, such as mourners and sorcerers. Nor may one lease dinars or silver coins, for such practices encourage usury.

§. It must be specified whether an object is leased in whole or in part.⁹ As for paying the tailor, the one who cleans clothes, the baker and others in that category, they may claim their wages only after they have completed their work.¹⁰ The owner of a house, after having contracted to lease it, may ask for the rent daily, whether the lessees dwell in it or not, unless according to their agreement and knowledge, it was clear that he would collect the rent monthly.¹¹ Craftsmen, such as dyers and silversmiths, may keep [the object they took or made] from its owner¹² until they receive their wages.

If an object is lost, but not by his negligence or fraud, the craftsman incurs no debt, but shall lose his wage. The lessee incurs no debt if he hires an object which becomes spoiled while in his custody, provided that there was no negligence or fraud on his part and that he observed the terms of the contract.¹³ The lessee incurs a debt, if there was an agreement not to light a fire [in the house], but he did light one.¹⁴ Before beginning the construction of a house the builder shall have [the employer's] guaranty that the latter will supply him with the grass and timber required for the job.¹⁵ If a boatman overloads the boat against the advice of his companions or at an improper time,¹⁶ or overloads a boat in poor condition, he is liable; but if he was not negligent, he incurs no debt.¹⁷ If a man takes a stone, to carry it or to split it, and he breaks it for want of skill on his part, he shall either pay or not.¹⁸ A washerman is liable if rats spoil any of the clothes given to him because he was negligent in not looking after them properly.¹⁹ Similarly, a person is negligent if he is given something [on lease] and fails to keep it safe: he is liable if he failed to defend

9. Arabic text: "Rent must be paid, or falls due, according to an express pact or according to the usage known in the country, either in advance — in which case the payment covers the total amount or part of it only — or after all benefit has been derived" (6/339).
10. Arabic text: "... unless they agreed to it" (1/340), that is, unless it was agreed to pay the wage before the completion of the work. Though very distorted, the reference is to Inst. III, 24, 1.
11. Arabic text: "... unless the agreement or the usage of the country provided for monthly payment" (2.340).
12. That is, the object they were commissioned to make or repair.
13. That is, if he is one who normally keeps the thing on lease with the care required from a *diligentissimus paterfamilias*, Inst. III, 24, 5.
14. This debt arises from the fact that the smoke from the fire lit in the house blackens it (ደጠቆረበትን ፡ ጭከረላ ፡ ደገባጥላ), POEFNM 409-2. But see the Arabic text in the following note.
15. The guaranty is required lest the builder run short of grass and timber, idle about, and waste his time. Another interpretation is that the builder shall guarantee that he will supply the grass and timber and construct the house, POEFNM 408-2. Arabic text: "And similarly, if the tenant binds himself not to work with dry grass inside the house (grass which is dangerous as it may start a fire), but does so in violation of his obligation, he must repair any damage done [to the house]" (3/340). The reference is to Dig. XIX, 2, 11.1 and 4.
16. "During a storm or hurricane" (ነፋስ፣ ግዕበል፣ ጥገድ፣ በተነግበት፣ ጊዜ ፣), POEFNM 409-2.
17. He is not liable if he has taken the ordinary precaution of using a good boat, and a storm arises unexpectedly, POEFNM 409-3.
18. The POEFNM 409-3 interpretation runs: "He shall not pay if the stone falls apart despite his skillful handling, because of a crack in it."
19. This is the case of the *fullo* or *sarcinator*, who is responsible for the safekeeping of the clothing given him for washing, Dig. XIX, 2, 13.6.

it when he could have done so.²⁰ One who leases something with the knowledge that the lessee will be exposed to some harm, and does not warn him of it, is responsible for any harm done to the lessee if the latter was not aware of the possible danger, as in the case of a cracked vessel, or a grassy pasture, or water²¹ which causes harm to the animals that graze on it.²² And the one who receives wages for keeping something is responsible if he is careless in keeping it.

§. One may lease a house even if what will be done in it is not known;²³ however, nothing unusual shall be done [in it],²⁴ nor anything which may spoil it, unless there is an express agreement to do such a thing, such as building a steam bath or a kitchen.

A lease of farmland shall be in accordance with the usage prevalent in similar things. If the one who sows²⁵ does not manifest [his intention to renew the lease], the lessor may ask him to remove any construction he built on the land and anything he planted²⁶ when the lease expires. On the other hand, they may agree to leave the construction and what has been planted intact, so that the tenant may keep them and the landlord may keep the land.²⁷ [Or, again, they may agree] on the purchase of the land by the tenant, or on the renewal of the lease for the land, or [on giving] the equivalent price of the land's rent [if the rent is measured in crops and the tenant has sold them],²⁸ or on leasing another house with its plantings.²⁹ The lessor may sell to the lessee what he had leased to him; [if he does,] the rent fixed in the lease before the purchase shall no longer be paid³⁰ and they shall agree to terminate the lease upon purchase of the land. If the lessee's [situation] is altered [by sale of the leased property] to a buyer, let the rent be determined according to the [previous] choice of the lessee.³¹ A buyer who is not aware of the lease³² may choose either to purchase [the land] or to cancel his purchase [when he learns of the lease].

Beasts may be hired for riding or transportation, in accordance with custom.³³

20. In all likelihood this is a reference to the responsibility of the lessee for the diligent custody of the object taken on lease.
21. Arabic text: "...[a grassy pasture] whose grass and water is harmful" (5/341).
22. Dig. XIX, 2, 19.1.
23. That is, without determining for what purpose it will be rented.
24. Activity that is not usually carried on in such a house (6,341).
25. That is, the *colonus* (the lessee of land), Inst. II, 1, 36.
26. Or according to the POEFNM 410-2, *ያንድ ፍረ ከበላ በጊላ ለሰጠግኝ ተጠግኝ፣ ፍረህን ለትጫህ ጎጂህን ለፍርሰህ ሂድ ሲለፀ ይገባል* = "after the tenant has harvested one time, the landlord may say to him: 'Gather your fruits, pull down your house, and leave the land.'"
27. *ቤት ለባለ ቤት ተክል ለባለ ተክል ቦታ ለባለ ቦታ ይሆን ዘንድ* = "so that the house, the plants and the land may go to their respective owners," POEFNM 410-3.
28. Following POEFNM 410-3.
29. Arabic text: "They may agree that the building and plants go to their owner, and that the land goes to its owner by renewing the contract of lease, or that the tenant will buy the land, or that the lessor will buy the building and plants" (2/342).
30. It may also be translated: "and [payment of any balance of] rent fixed in the lease before the purchase shall be due."
31. The reference is to Dig. XIX, 2, 25.1, which provides that should someone become a lessor by virtue of purchase, he must allow the lessee to enjoy his tenancy in accordance with the contract made with his former lessor.
32. That is, at the time of purchase.
33. *በከፍ ልግድ* = "according to custom" is also taken in a specific sense: that a female ass shall not be loaded as heavily as a male, POEFNM 411-1.

The wage for riding shall be equal to that for transportation.³⁴ If the hirer has not³⁵ explicitly stated who will ride [the beast] or what he will load [it with], he is not allowed to change [the weight of] the load or its type unless he reduces the load. For example, one who hires a beast in order to load it with a meklit³⁶ of cotton, may not load it with a meklit of iron; nor may he load it in excess of the established measure. [He must] conform to the measure [established by his agreement]. Whosoever hired a beast for travelling over a determined route and then went beyond it, is responsible for any harm done to the beast, unless the owner was aware of the change and did not object to it. And if part of what was agreed upon, such as victuals or the like, is not included in the beast's load, the hirer may take³⁷ other goods equivalent to the missing [part and load the beast with them] unless he and the lessor agreed otherwise.³⁸

§. Causes for termination of a lease: A lease terminates when the time agreed upon expires, and the [obligation to pay] rent correspondingly ceases.³⁹ [The lease may also be terminated] if the rent decreases in value.⁴⁰ Whosoever hires a house and finds a defect in it that may make it harmful to dwell in may terminate his lease. And if [such] a defect appears in the house, he may terminate the lease the moment that dangerous [defect] appears in it.⁴¹ The same holds true for other benefits.⁴² If either the lessor or the lessee dies, and if the contract was made with the other [only],⁴³ the contract is terminated.

The mason must receive his wages after he completes a building. If he does not, he may ask [the employer to produce] a guarantor. He is entitled to sell the

34. Thus to give some sense to the puzzling phrasing which runs መከተላት ፡ ከግሁ ፡ literally, "and what is like her, like him."
35. The Arabic text omits this negative, saying that one may hire beasts even without specifying who will ride them or what they will transport; however, if it was explicitly stated that they must be loaded only with a specified thing, this directive shall not be disobeyed unless the new load is less burdensome to the beast (2.343).
36. "Meklit" (መክሊት) as it appears in the Ge'ez text, has been used here. A meklit is a scriptural measure of weight, constituting about forty-two kilos. See መጽሐፍ ፡ ቅዱስ ፡ የብሉይ ፍጥረት ፡ ቤዳን ፡ መጽሐፍት (an Amharic edition of the Bible), (Addis Ababa, 1953 E.C.), introductory note on foreign words. Guidi used the term *quintar*, which means quintal (text:343).
37. According to the gloss, ደንግላ፡ዘተዐሰሰ፡ translated as "the hirer may take," also means that the owner of the beast shall be paid the full rent regardless of the fact that the load is lighter than what was agreed to.
38. Arabic text: "... unless a different agreement was made" (4.343). Gloss: "if I find another load, I will load [the beast with it and you will receive the full rent]; but if I do not, you will not be paid the full rent."
39. ደቀውግ፡ "ceases," from the verb ቆመ፡ According to Dillmann, *Lexicon Linguae Aethiopicae*, c. 451, the verb may also be translated in the sense of "persists." Thus, the passage could be read as follows: "... but [the obligation to pay] rent in a similar fashion persists." Guidi and the Arabic text favor the translation "ceases" (7.343), and this has been adopted in the text. The POEFNM 411-3, on the other hand, reads: "... but the lease persists, if the parties agree again, at the same price."
40. መበጎት ፡ literally, "damaged, corrupted, decayed, rotten, withering." Guidi translates this as "defective," but interpolates the apparently permissible meaning "lesser," which is the sense chosen in the text. The POEFNM 421-3 comments ጥፋክፋ፡ "lost, bad." Perhaps the reference is to a case where the agreed rent was to be paid in crops, but through mishap the crops spoil.
41. Arabic text: "... if the defect is not remedied" (1:344).
42. The same principle, to wit, the lease is cancelled, applies to other forms of lease (contracts for mutual benefit) should a defect be discovered.
43. That is, death of one of the parties terminates the contract if it was not transferable, cf. Dig. XIX, 2, 4.

wages he receives for his labor⁴⁴ all the days of his life. This provision applies to both seller and buyer. If a laborer sells wages he received for work he has not performed,⁴⁵ the buyer is responsible if he was aware of this.⁴⁶ But if the buyer was unaware, he is not liable for what he has bought, whether it is a mule, a sheep or a similar beast, or any [other] object. But the [bargain between] the seller and the buyer must be made in the presence of experienced witnesses.⁴⁷

If the wages paid to a laborer are found to be inadequate⁴⁸ after he has toiled for many days, and [this is because] a defect which should not be there is discovered in [the work he has done],⁴⁹ the laborer must receive for his work wages determined in the measure [of the work done], in proportion to an estimate [of its value].⁵⁰ But a [full] wage [is due] if the work was committed [to the worker] and executed [by him] according to the model [he was given].⁵¹ Furthermore, if [a man's] wages are inadequate because the house [he built] does not yield the expected rent, and defects which do not make it uninhabitable are found therein, let his wages be inadequate.⁵² If defects are found in the house, one must not say that the wages are inadequate.⁵³ The same holds true for other benefits.⁵⁴ The contract shall be terminated if either the lessor or the lessee dies and the contract was made with the other [only].⁵⁵

If a person hires a house for one dinar per month and does not fix the number of months [of the lease], he may terminate the lease after one month. One may reserve an option for a fixed period of time in the contract of lease, and terminate the contract [within that time]. If the object hired is stolen, or something occurs which hinders enjoyment of it, the lessee may terminate the contract and pay only for the period before termination, unless the object is returned to him in its original state.⁵⁶ A lease⁵⁷ may be terminated for justifiable cause, [but the termination

44. If his wages are paid in kind, as in sheep, oxen, etc.
45. Gloss: "without completing his work."
46. Gloss: "that he has not finished his work."
47. Following POEFNM 412-2.
48. Literally, "are lost," but translated here as "inadequate," in the sense of less than originally agreed upon; for an alternative translation, see the following note.
49. ቡቲ : "in it," can also be translated "in the wage he has received." The sentence might then be translated: "If a laborer's wages are found to be inadequate after he has toiled for many days, and this is because a defect is discovered ... in them (e.g., a mule is lame, a cow is barren, etc.), the laborer must be paid for his work" This is the translation adopted by Guidi (text 344). The translation, "in the work he has done," is more consistent with what follows in the Ge'ez text, however, and has apparent roots in Roman Law, note 50 *infra*.
50. Gloss: "let him receive his wage." The laborer is liable for any defect found in the work (*opus vitiosum*), cf. Dig. XIX, 2, 51.1. Nevertheless, he must be paid for the portion of his work which is acceptable.
51. POEFNM 412-2 interpretation runs: "Wages must be paid in whole if the employer told the laborer: 'Build [a house] like A's house for me,' and it was built accordingly."
52. Gloss: ጥፋና ፣ ጥፋ ፣ ደተያዩ ፣ "one defect shall compensate another defect"; thus, the defect found in the house shall be offset by a reduction of wages.
53. This passage may also be taken to mean: "If the rent of a house is less than that of a similar house, but a defect which does not impede dwelling in the house is found there, let the rent be inadequate. If a defect is found in the house one must not say that the rent is inadequate." The gloss at this point inserts the following: "One shall not rescind the contract on the ground that the rent is inadequate."
54. Again, በጸሐዮት ፣ "benefits," stands for "contracts of lease," n. 42 *supra*.
55. N. 43, *supra*.
56. Gloss: "the contract is still valid if they agree to replace the stolen object."
57. ተወሰደ ፣ "lessee," has been corrected to ተወሰሶ ፣ "lease," POEFNM 413-1.

also.⁶⁹ The one who stands as tenant for any property has no obligation to pay [rent] if, by God's wrath,⁷⁰ some event spoiling the fruits occurs to them. But he has an obligation to pay if the damage done is moderate.⁷¹ The tenant who must pay his [landlord as a] partner is obliged to pay from the goods of the partnership [to the extent of] the profit or the loss.⁷² If the tenant leaves the field he leased without [good] cause, before the expiration [of the contract], he nonetheless remains its tenant until the termination [of the contract].

If there is an agreement to appoint an overseer, we recommend that a good man [suitable] for this be appointed.⁷³ If people take certain premises on lease, and disappear for many years or neglect the up-keep of the place, such as putting on a roof and similar things, the one to whom this has happened may call the elders and show them what has happened there; then, he may do what he likes. If a place is rocked by an earthquake, the cost [of any damage] done to it is to be borne by the landlord.

A lease may last until the end of the lessee's life, or until the period of time agreed upon by the contracting parties has expired. This period of time shall not exceed thirty years. Governors and members of their entourage are not permitted to take anything on lease or as pledge, whether for their own use or for the use of others (who commit a fraud by such an act), unless they [make the lease] upon payment of the equivalent price.⁷⁴ [If they fail to pay the fair price], the price shall be taken from their hands and paid [to the lessor], from the beginning to the end.⁷⁵ A person who took a large estate on lease shall not [himself] pay tribute⁷⁶ for it.⁷⁷ [Rather], he may sell part of the rent⁷⁸ [to pay it], after informing the magistrate of the terms of sale in the presence of the bishops, the deacons, and the priests, who shall put the divine Gospel before them. If there is no other way of collecting the tribute, the rent may be sold by the owner, who shall pay the tribute out of the proceeds of the sale—all this to be done in the presence of witnesses.

69. This refers to the Roman law principle that the *colonus*, or tenant of a rural lease, is not bound to pay rent if natural events like drought, inundation, or plant disease cause damage to the crops, Dig. XIX, 2, 15.2. By the same token, the *colonus* must pay the arrears for the bad year, if the next year proves prosperous, *id.*, 2, 15.4. Arabic text: "If the tenant pays a reduced rent because of famine, and there is abundance the following year, the lessor may claim the difference; but if famine strikes in the last year of a lease, the lessor may claim nothing" (3/347).
70. "By 'God's wrath,' one means hail or locusts," POEFNM 414-2. Arabic text: "... an incalculable damage" (4/347).
71. **مَتَدَان**: "moderate," also means "half," hence, if hail or locusts destroy half the fruits, the lessee shall pay for the other half. What is actually meant, however, is that the *colonus* must bear the *modicum damnum*, the damage of little consequence, Dig. XIX, 2, 25.5.
72. The Arabic text is much clearer and runs: "In the *metayage* the tenant and the landlord share the profit and bear together the loss" (1/348); *cf.* Dig. XIX, 3, 25.6.
73. This sentence, which seems to be misplaced, apparently refers to the *adprobatio operis*, approval of work, to be secured from a *vir bonus* by a laborer at the conclusion of his labors, Dig. XIX, 2, 24.pr.
74. Gloss: "If the owner agrees to sell (to lease) at the normal price."
75. That is, the full price.
76. That is, tributes on the land.
77. The Arabic text says that in case one is not able to pay tribute, one may sell a part of the estate (2/349).
78. That is, something out of the produce constituting rent in kind to be paid to the landlord.

CHAPTER XXXVII
ON STREETS, SQUARES, PATHS, REPAIR OF BUILDINGS,
AND THE FLOW OF WATER TO FIELDS AND RIVERS IN
THE COUNTRYSIDE, AS FOUND IN THE ABTELIS'

TS 38. §. Provisions on jointly owned buildings:

No one of the joint owners of a building may put servants² therein without the consent of his partners. As for a wall owned jointly, no one may demolish it or build it without the consent of his partners. No one may build an oven or a fire-place for a bath near a wall owned in common, in such a way that the fire damages the wall.

If someone builds an oven from which smoke rises, thereby injuring those who dwell in the upper storey, the law commands³ that he be forbidden to direct the smoke towards them,⁴ unless he has the right to direct it [there].⁵ Similarly, those who dwell upstairs may not drop water⁶ or throw dirt⁷ which may harm those who dwell downstairs. They may not do so because they may carry out in their dwelling only those activities that do not harm their neighbors. The same rule applies to wells.⁸ One is permitted to build a staircase on the side of a certain wall,⁹ provided that it does not harm another.¹⁰ As for [the wall which is in] a deserted place, no one shall be prevented from making it higher.¹¹ Nor is it good for one to prevent his neighbor from building a door leading to an internal path¹² if there is no danger of injury to passers-by.¹³

1. This chapter deals with the principles which govern the relationship of neighbors, the legal height of and distance between buildings (Nov. 63), servitudes, either urban or rural, and the regime of waters, Inst. II, 2, 3; *id.*, 3; Dig. VIII, *passim*; *id.*, XXXIX, 3, *passim*.
2. The gloss uses the term ባለጊባ; while in the POEFNM 416-1 interpretation it is said ጠባቂ ጉዳይ; both terms denote one to whom the custody of the house is entrusted. The sense, according to the Arabic text (5/349), is that no one of the joint owners may impose servitude over the jointly owned property. It seems a slight reference to the principle that *nulli res sua servit*, Dig. VIII, 2, 26. The Ge'ez translator appears to have had difficulty throughout in understanding or presenting the concept of servitude.
3. Gloss: "the 318 Fathers command."
4. Dig. VIII, 5, 8.5.
5. That is a *jus fumi immitendi*, Dig. VIII, 5, 8.5. Gloss: "unless he has a previous right."
6. That is, discharge rain water on to those below, *stillicidium*, Inst. II, 3, 1.
7. Dig. VIII, 5, 8.5.
8. That is, one may not dig a well with the purpose of injuring one's neighbor, *minuendae aquae meae gratia*, Dig. VIII, 1, 15.pr.
9. Arabic text: "... on the side of a common wall" (3/350).
10. Arabic text: "... if it does not damage the said wall" (4/350).
11. In the POEFNM 416-3: "One shall not be prevented from building a house in a place situated far from inhabited areas."
12. In the POEFNM 416-3: "One shall not prevent his neighbor from building a door leading to an inner room (ወደ ስልጣኝ ገደብ)."
13. The POEFNM 416-3 comments here: ግመል ለጎደተኛ ስጦት ለጎደተኛ ግንደክላክ ስጦት: "If it does not obstruct the passage of a loaded camel or [a pair of] yoked oxen." This certainly refers to the *actus*, the right of passage of animals and vehicles (*jumentum vel vehiculum*), Inst. II, 3, pr.; Dig. VIII, 3, 12.

§. Provisions on the distance between buildings and trees:

If a man wishes to build a fence, he must keep it one step away from his neighbor; if it is a house, it must be at a distance of six steps. If it is a pit or a hole,¹⁴ the distance shall be in proportion to its depth, but if it is a well, [the distance shall be] five cubits, provided that his neighbor does not have a well already; [if his neighbor has a well,] he shall not dig a well.

If he wants to plant an olive tree or a fig tree he shall take nine steps from the plants of his neighbor, and then he may plant it. But if he wishes to plant anything else, the distance shall be five steps. If in the middle of one's enclosure there is a tree whose roots extend to the foundation of his neighbor's enclosure, thereby damaging it, the magistrate must order the tree cut.

If two houses are side by side, the distance, as measured between their foundations and their tops, shall be twelve feet.¹⁵ If someone makes his building higher, others may raise theirs as high as the top of that building,¹⁶ put in new windows, and renew old ones. And if a man demands from his neighbor the distance of twelve feet, he may not obstruct his neighbor's view,¹⁷ provided that the latter's house gives on the view¹⁸ from a place which has the right to it. However, he must look towards this view standing up without turning, or sitting down without straining his head to see.¹⁹ If there is a distance of 100 feet between the two houses, whosoever wishes to obstruct his neighbor's view may do so.²⁰ As for one who builds a house, if there is a square²¹ or a large flat of land²² between him and his neighbor, and if the measure of the square and the flat of land is a distance of twelve feet, neither of them shall include [this space] within his house. But if it is larger than this, they will not be crowded together, and each of them may observe his rule.²³ If there are two houses which stand twelve

14. A pit or hole dug in the ground and used as a storing place for wine or cereals, POEFNM 417-1.
15. The distance shall be measured from wall to wall at the base and at the top equally (በፊት ሁለቱ፣ ባሕርቱ) and, according to the gloss, ያለግዛነቢያ፣ "without considering the jutting parts," such as gutters, balconies, etc. For the distance measured in steps, the Ge'ez text uses the term ምጋረ፣ እግር፣ or ምጋረ፣ "step," from the verb ምገረ፣ "to make a step, to step"; for the distance measured in feet, the term is ምክያረ፣ እግር፣ or ምክያረ፣ "foot-mark, foot" from the verb ከያረ፣ "to tread on with the feet, to trample," Dillmann, *Lexicon Linguae Aethiopicae*, c. 266 and c. 872.
16. That is, the others may have the *jus altius tollendi*, Gai. II, 31; Dig. VIII, 3, 2.pr.
17. He may not demand that his neighbor be prevented from building windows like ጠግግ፣ ጠብቶ፣ a loop-hole from which the neighbor can have a view of his surroundings, POEFNM 417-3. This is the *jus ne prospectui officiat*, right to a pleasing and unimpeded view, Dig. VIII, 2, 15.
18. The term ባሕር፣ literally, "sea," means a general view or panorama in this as well as in the following passages.
19. He must look from a natural standing or sitting position, and not by turning around or straining his head, since by so doing he might look into the opposite house, through its windows.
20. He may build windows which overlook the neighbor's house.
21. Gloss: ጠራው፣ "a little square where boys run about and play."
22. Gloss: ጠጋ፣ "grazing place."
23. They shall divide between them what is in excess of twelve feet. This division shall be made equally, and this is what is meant by ይትገቡ፣ በበሥርዓታቸው "each shall observe his rule." The Arabic text says that if the streets and squares measure more than this, the excess must be considered as public domain and shall not be occupied by one who builds (1/352).

or if you build a house there after I have removed my hut and closed its windows, and then ten years lapse, you are in your full right. But if you have built nothing new there, but have left it as it was, the right remains perpetually in my favor; if after twenty years I wish to put my beams back in the wall, erecting them in their former place, no one may hinder me from doing so.

As for fixing the time limit [of servitudes], people shall not make agreements that have an extremely long duration; they shall be limited to thirty years.

No one may throw dirt on a wall not belonging to him unless he has a right to do so. Similarly, one may not cause smoke from an oven or bath to rise [to the damage of another]; the same holds true for other forms of servitude.

If there is need to repair a sewer, the dispute which might arise between the co-users [on account of the repair] shall be settled by requiring that every one repair it for the distance beginning at his place and continuing to his neighbor's place. If one of the partners has incurred expenses on account of the common property³⁸ and the other has agreed [to pay his share],³⁹ he may claim from his partner the amount specified [as the latter's share] until such time as he recoups the amount he spent from his own funds.

If your fence leans against my house, I must give you the half foot necessary to restore it.⁴⁰ He who builds a window in a fence he does not own must pay for [using] it until he restores the fence to its original condition.

§. Waters:

People in the lowlands have a right to demand that their counterparts in the highlands let the waters flow properly. The former must compensate the latter for this advantage,⁴¹ since they take the wealth and the fertility⁴² of the highland inhabitants' land.⁴³

As for the right to [use] water,⁴⁴ it shall be extinguished on the expiration of the time fixed, whether it was originally to be exercised for the duration of the summer, only a month, more than a month, or for more than a year. By the same token, the use of a [water] way⁴⁵ ceases after expiration of the fixed period of time, until the time comes again,⁴⁶ be it for a day, an hour, or for a day and night continuously.⁴⁷ If one is entitled to bring water from a spring which dries up for

38. That is, the sewer used jointly.

39. Following the rendition in POEFNM 420-1.

40. That is, the half foot necessary to build a retaining wall. Arabic text: "If your wall inclines half a foot towards my house, I have the right to oblige you to restore it" (3/354); Dig. VIII, 5, 17.pr.

41. That is, the people in the lowlands must supply those in the highlands with cereals, etc., POEFNM 420-2.

42. One reads ስብሐት: "glory," in the Ge'ez text, but the original term seems to have been ስብሐ: "humus" (5/354).

43. The Arabic text says that the inhabitants of the lowlands have, in compensation for the work which they do for the flowing of the water, the good and fertile soil brought down from the highlands (5/354).

44. The right of drawing water, *aquae haustus*, Inst. II, 3, 2; Dig. VIII, 3, 1.1.

45. That is, the right to bring water, or *aqueductus*, Inst. II, 3, pr.; Dig. VIII, 3, 1.pr.

46. If two persons have a right to bring water from the same place, and one of them is entitled to bring it during a certain hour of the day, his right ceases the moment the hour passes, until the said hour "comes again" (3/355).

47. Arabic text: "... during the day or during the night" (2/355).

a long time, but [later] flows again, the right is reestablished in his favor, and he may bring the water from that place again.⁴⁸

And if someone gives you the right to water animals at his pool,⁴⁹ he must provide you with a road by which to water them,⁵⁰ if you cannot use another road. Whosoever has the right to water or to graze his cattle on your land⁵¹ has another right, namely, to build a hut there.⁵² Whosoever has a water reservoir on the land of another must have a road by which he may go to his property and a place where he can put earth, stones,⁵³ tools, and whatever is necessary for irrigation.

If there is a river flowing between my land and yours, and little by little it washes away a part of your land and adds to mine, without your knowledge or without your having seen how much it took away and on what day of the river's flowing this happened, and if the river flowing between us two washes away a part of your land and adds to mine, this added part remains yours.⁵⁴

§. Purchase of buildings:

Anyone who buys and takes possession of a piece of land, and then, well aware that the land did not belong to the seller, puts buildings on it, may not claim his expenses [in building], but may be permitted to remove the building from the land. Nothing may be claimed from the [true] owner. If a powerful⁵⁵ man buys land which is not owned by the seller, and sows and builds there, the judge shall not give his decision without examining whether the true owner of the land is entitled to have [the building].⁵⁶ The one who had the right to build a house there must pay the expenses for the construction of the building, and may then take back the land and what was added to it. If he is so poor that he could not choose whether [or not] to do what was done,⁵⁷ the buyer who

48. Gloss: ባረረበት ይገኛል: "one shall begin [to use the water] as from the spot where it dried up." This means that if a spring which supplies three people with water does not reach the third person because its flow has diminished, this third person has the right to bring the water first (to begin) when the spring starts to flow again. The other two persons may use the water only if he does not need it. The Arabic text reads: "If one draws water from a spring which dries up for years and then flows again, the servitude over the spring is renewed in his favor, and he may draw water as before" (4/355).
49. *Pecoris ad aquam adpulsus*, right of driving cattle to water, Inst. II, 3, 2; Dig. VIII, 3, 1.1.
50. This refers to the accessory rights (*adminicula servitutis*), an example of which is given in Dig. VIII, 3, 1.3.
51. *Jus pascendi*, Inst. II, 3, 2; Dig. XVIII, 3, 1.1.
52. Dig. VIII, 3, 6.1.
53. This may be a distorted reference to the *jus harenae fodiendae*, right of digging sand, Inst. II, 3, 2.
54. Arabic text: "If a river flows between my land and yours, erodes away the land little by little, and deposits the eroded earth on my land imperceptibly, without your knowledge as to how and when the river eroded it, *this added soil becomes mine*, but if the portion washed away from your land and added to mine is noticeable, it shall remain yours" (2/356). The Ge'ez translator apparently omitted the italicized text. The POEFNM 421-3 comments: "The book says so, but the farmer does not agree. He says that the water has made a judgment in his favor."
55. Arabic text: "[If one] is in good faith," (4.356); accordingly the above phrasing should run: "If one buys ... in good faith." In the POEFNM 422-1 ጸገግ: "to be strong, powerful" is paraphrased as "to have the mouth of Makonnen and the strength of an elephant" (ለፍ: ለለግ: የመኩገገ: ጉልበት: ለለግ: የዘሆገ:). By "mouth" is meant "authority or eloquence." "Makonnen," etymologically taken, means also "a high ranking person."
56. Gloss: "if the owner would and could put up a building on it."
57. Or, if he is so poor that he cannot pay the expenses, POEFNM 422-2.

in good faith put up the building may remove his building.⁵⁸ But [if the owner of the land wants to buy the building], the one who built it in good faith shall make it easy for the former to pay the amount he spent for the construction, according to an agreement made [between them],⁵⁹ and to take the building. If the owner of a piece of land had shown [his intention] to sell it, he may not retake the land by force,⁶⁰ even if he is poor. He shall accept [from the builder] its fair price after its improvement; all expenses incurred in the improvement shall be charged to him.

If a man hides a deposit entrusted to him, or sells it or gives it away, and if a friend⁶¹ of the depositor knows this, but does not inform the person who bought [or received] it; or if the depositee gives the deposit as pledge⁶² or for another purpose,⁶³ after a period of ten years for the one who is present, or a period of twenty years for the one who is absent until his return from a journey, the [right of] ownership becomes valid for him who possesses it, after thirty years.⁶⁴ But if the true owner is unaware of [the transfer], the ownership is not validly transferred to the possessor until thirty years later.⁶⁵ If the owner makes his ownership known, saying "It is mine," within ten or twenty or even thirty years, it still belongs to him. He shall not be deprived of his original land, his fields, or his inheritance, nor hindered from entering his inherited property; neither shall the buyer refuse [to give] him [what is his]. And if a movable stays in one's hands for thirty years,⁶⁶ and no one makes any claim for it, in this case the possessor becomes the owner.

If I sell a part of my land with the stipulation [that I may] bring water over it, but the period of time established by law elapses before I build the canal, [my right is extinguished] since the land is your property. But if I build the canal and bring water over your land, you have no right to prevent me from bringing the water.⁶⁷ If a former owner could not prevent the bringing of water [over his land], a buyer may not prevent it either, because in buying he consented to these servitudes.

§. On the measure of a narrow street,⁶⁸ extracted from all the canons laid down in this chapter:

No one may renew whatever can cause damage to another. Any right not exercised for ten years, in the case of those present, or for twenty years, in the case of absent persons, is extinguished, except the [right to use] a street leading to

58. *من بنى في أرض غيره في حسن نية*: "the one who believed and built" means "the buyer in good faith who built." The Arabic text says: "He who built a house in good faith shall take away what he built" (1:357).

59. Gloss: "if he has given his word."

60. By "he may not retake the land by force" is meant that the landlord may not demand that the buyer destroy the building and move out, POEFNM 422-2.

61. Arabic text: "... the owner of the deposit" (4:357).

62. Following the gloss.

63. Gloss: "a present given out of gratitude."

64. "Thirty years" is presumably misplaced. See the following footnote.

65. The Arabic version says that if anyone conceals his identity as mandatary and sells or gives away a thing belonging to his mandator, and the latter knows all this and does not inform the buyer, etc., after a period of ten years if the owner is present in the country, or of twenty years if he is absent, the ownership of the thing in question shall be transferred to the one to whom it came by sale or other transfer. But if the true owner was unaware of the act of his mandatary, it will be transferred only after thirty years (6:357).

66. Arabic text: "... three years" (3:358).

67. The rendition of these passages follows the POEFNM 423-2.

68. This paragraph recapitulates the preceding passages and no mention is made of rules regarding the width of streets. The Arabic heading reads "By way of summary" (6:358).

§. What comes after that which has already been dealt with in this chapter:

If land lies fallow because of lack of water or because it is flooded, or if no sound of its being worked is heard in the surrounding countryside,⁷⁷ or its owner is not known, a man may work on this land and have ownership of it. At the place which has traces of a building's walls let him build them up and put over them a roof. And where there is no trace of work, let him make an enclosure, and let him make a door. As for the fields, let him plow them and improve the earth, and let him make the water flow through it. Let him dig wells and springs, and draw out the hidden treasures.

§. If something can not be separated from the building which houses it⁷⁸ without rendering that thing useless for the purpose for which it was meant, as in the case of a bath, oven, mill, or well, and if one of the partners owning it wishes to sell his partnership share or to lease it, the [other] partner must buy or hire the share belonging to the former.⁷⁹ The price for the purchase or hiring shall be that agreed upon with the outsider. And if the partner was aware [of the sale or hiring] but ignored it, the person living nearest to the property may take it, as may the one who buys it with the intent of giving it away as a charitable legacy for the poor. Those persons who are not mentioned [here] shall be treated equally. What is due to the partners is in proportion to the share they own; and what is due to the close neighbors shall be in proportion to the need they have.

If an owner has made a contract [of sale] with a person other than the one who has priority⁸⁰ and the latter then makes one of the contracting parties aware of his [desire to] purchase — of his intention to make a contract on the price and [other] matters; or, if it was [previously] agreed that the owner would not sell [the object] to others unless the one who had priority consented, then the contract made with the other person is null; the contract with the one who had priority remains valid.⁸¹ If there is conflicting testimony, the allegations of the buyer who has priority⁸² shall prevail, if supported by his oath. And if the one who has priority delays his agreement after he is informed of the seller's intention,⁸³ unless he has a manifest reason, his right of priority is annulled. The same rule applies to a lawsuit⁸⁴ delayed without a manifest reason.⁸⁵ If one who has a right of priority dies, his priority is extinguished. It is not extinguished if one of the other partners [having priority] dies.⁸⁶

77. Arabic text: "... the land wherefrom the voice [of a shouting person] cannot be heard by people who are in the closest house" (4.361).

78. This may also mean an object that cannot be separated from another object that it usually goes with, such as a sword and its scabbard; but obviously the principal reference is to things in the nature of fixtures.

79. The Arabic text says that the partner has priority to buy or hire his partner's share (1/362).

80. **أولوية** : literally, "the first," means here, "one who has priority in purchase."

81. Arabic text: "If the owner makes a contract with one who has no right of pre-emption, and the one who has the right has caused one of the contracting parties to bear witness to his desire to make a contract on the price and the condition stipulated; or if he stated that he has no previous notice of the contract being made with an outsider, then that contract shall be null and the contract shall be made with him instead of the outsider" (3/362).

82. Gloss: "the owner."

83. That is, after he is aware the seller is making a contract with another buyer, POEFNM 426-3.

84. Gloss: "if one acts as an accuser."

85. This means that if a person accuses another but fails to pursue his charge, and in the course of time the accused brings a charge against the accuser, the first accuser shall lose the priority he had initially as an accuser (3/363).

86. The right of priority is exercised by the surviving partner.

CHAPTER XXXVIII

ON LOAN¹

A contract of loan [for common profit]² may be concluded between those persons who have the power to dispose of the money involved. It is not valid unless it involves specified goods, as to which both the weight and the profit to be derived therefrom are fixed, either in dinars or in other [currency]. It is not proper to stipulate that the profit from one kind [of goods] goes to one, and the profit from another kind goes to another,³ lest quarrels ensue. Nor is it suitable to make a contract for the time during which the working partner will not be able to sell; rather, it must be made for the time during which he can do business.⁴

The working partner must collect [the profit] and pay expenses as if he were a mandatary. He shall not buy at a price higher than the current and the usual one, nor sell for a price lower than the current price; rather,⁵ he should sell at the customary sales price. Moreover, he shall not sell anything on credit without surety and a pledge, the holding of which is equivalent to what is sold, nor without a specified price. And he shall not enrich himself by means of the sale or purchase. He shall not take any loan from the original sum [he borrowed with which to do business], nor shall he buy with it anything worth more than it. But all this may be done, if he has the approval of the money's owner.

As for expenses incurred in going on a journey [for the purpose of trading], it shall be as agreed between them.⁶ If no agreement [regarding expenses] was made before, the expenses shall be [borne] in proportion to the share of each in the profit. If there is no profit, [the expenses shall be deducted] from the capital. The partner who runs the business as a mandatary is the trusted lord of the money:⁷ his word concerning sale, purchase, profit, loss, amount of profit, and capital must be accepted unless there is a reliable witness to nullify it. But [what should be done is] to put testimony about the amount of the original capital, the allocation of the profit, and subsidiary agreements in written form beforehand.⁸

1. This chapter deals with the relationship between one person who puts up capital and another who does business with it, on the understanding that they will share the profit. Hence the heading should read ተሳትፎ: "partnership" rather than ልቀሎ: "loan." Guidi has translated the term as *societa*, "partnership" (text/363).
2. In the gloss and POEFNM 427-1.
3. Gloss: ሽግ : "cloth," ለጥሌ : "salt"; that is, it is not good to assign the profit from cloth to one and the profit from salt to another, because different amounts of profit may be made on cloth and salt. Both cloth and salt were important forms of currency in traditional Ethiopia, Pankhurst, "The History of Currency and Banking in Ethiopia," *Ethiopia Observer*, Vol. VIII, No. 4, (1965) p. 368.
4. In the POEFNM 427-2, "the time during which the working partner cannot sell" is specified to be the time after May-June, the heavy rain season; "the time during which working partner can sell" is the time after September-October.
5. Following the gloss, which inserts here ለላ : "rather."
6. If, for instance, they have agreed that the owner of the money shall reimburse the other, let it be so (9/364).
7. Arabic text: "He has the confidence of the owner of the money" (1.365).
8. Gloss: "but they must put the amount of the capital and the profit in writing beforehand."

The owner of the money may rescind [the contract] whenever he wishes, as may the working partner if the former can administer his property or appoint another person to run the business. If one of them dies or loses his intelligence, the contract shall be rescinded. The goods must be separated according to their type: if one of them wishes to sell [some goods] before dividing them between themselves, he may do so.⁹ If there is a debt attached to the money borrowed, the working partner shall pay it; if the lender contracted a debt in the interest of the business, he must pay that debt before anything else.¹⁰

9. Where, for instance, the object is one which cannot be divided easily, such as a carpet (7/365).
10. Arabic text: "If there is money coming to the partnership's provider of capital, the working partner must collect it. If, on the other hand, the provider of the capital owes money to other people, he must pay the debts before anything else" (8/365).

of a woman does.⁸ And an admission to the effect that a person owes an unborn child some property, because the child yet to be born is his natural heir or because it was willed to him, shall be effective if the child is born alive. If one admits owing property to a minor or to an insane person, the property belongs to the latter; the property admittedly owed to a slave belongs to his master. If one admits owing property to a monastery, it shall be given to those who dwell in it.

Part III. The thing which is admitted [as owed to someone]:

A confession to [owing] an object must not implicate the transfer of an object which the confessor can not dispose of, not being the owner of the object; if such a confession were permitted, a confession made by a mad person and a confession to an object not owned would be valid. To the contrary, if one is not an owner, his confession is invalid.⁹ When, indeed, one who is not an owner says: "My field, which I own and which is in my hands by length of use,¹⁰ belongs to A," this shall be void, because it is not his property.¹¹ One is not permitted to dispose of another's property as if it were his own, but an agreement may be made that the field be in his hands and that he may dispose of it. [Similarly], if one confesses to the manumission of a slave who was in another's hands, his confession is void.

Part IV. The formula of confession and its interpretation:

The formula [of confession is that] the one who admits being a debtor says: "I owe A [a tribute]," or, "[A deposit belonging to B] is with me," or "[I owe C] a debt." If another says: "He owes me [a tribute]," or "[A deposit belonging to me] is with him," or "He owes me a debt," and the other [admits it] and says: "I owe him [a tribute]," or "[A deposit belonging to him] is with me," or "[I owe him] a debt," or "[I admit the debt but] I have given it away as alms," or "I admit it," or "I do not deny it," or "Yes," or expressions similar to this or others in current use, all amount to confessions. And if he said: "I will admit it and not deny it," this is an admission for a future admission. If he says: "Take," or "Weigh out," or "Do what must be done," this must not be said in jest; a confession made in jest is not valid.¹²

8. **ሕሊደሊቅድ** : literally, "who does not wish," means in this context "one who cannot (is unable to) accept," and refers to an unborn child that cannot have or manifest a will of his own. This unborn child causes disputes concerning whom the thing will belong to if twins are born or other questions if the child is born dead (4 367). The Arabic text says that acceptance of the one who is admittedly a creditor is not necessary if it concerns an unborn child (4 367).
9. In order to make some sense, the intricate Ge'ez text is rendered as in the above, partially following the POEFNM 429-3. The first sentences of the Ge'ez text might be rendered: "The thing confessed can be an object not specified and not owned by the one who confesses..."; until this point the Ge'ez corresponds more or less to the Arabic. However, the text which follows becomes incoherent due to the improper insertion of the term **አብረ** : "mad person." See the Arabic counterpart in n. 11, *infra*.
10. Following POEFNM 430-1, wherein **ሥርዓተ ግብር** : "rule of prescription" is taken to mean "length of use."
11. Arabic text: "It is not required that the thing confessed be specified, because one may confess to an undetermined thing; nor must it be possessed by the one who confesses, because if it were possessed by him his confession would be void. A statement like 'the house which is my property and is in my hands, belongs to A,' is a self contradiction, as his property cannot be, at the same time, another's property" (2,3;368).
12. Arabic text: "If one says to another 'You owe me so much' and the latter, instead of admitting the debt, says: 'Take, weigh out, count,' or something else in jest, it does not constitute an admission" (4 369).

As for the interpretation of a confession, if one admits to owing something the quality of which is not known, or to owing money, the amount of which is asked about by the creditor or the depositor, he may declare an amount as little as possible, rather than the amount actually due.¹³ And if in making a confession, one magnifies the amount of his debt, he has added to his debt; the lesser and the greater amounts are in proportion to ten darahim.¹⁴ If he says "darahim," [in the plural.] the least it can be is three; if he says: "many, many darahim," the least it can be is eleven; and if he says: "many and many," the least amount is twenty-one darahim.¹⁵ And if he says: "I owe him [a tribute]" or "a deposit" or "a debt," this means that he admits his debt [and must pay it].¹⁶

If he says: "[Objects are with me] in deposit," or "[A slave is] with me," or "[Crops are stored] in my house," or "[Gold, silver, etc.] are kept in my coffer," or "[Beasts are] in my custody," this is an admission of deposit, loan, or pledge. Anyone who formulated his word of admission together with another which cancels [the first] in whole or in part¹⁷ cancels [his admission] totally or partially. This is, for instance, the one who says: "This land is yours, but I keep it [as pledge]," or "It belongs to [you and] your children," or "[It is yours.] but I have put the roof higher,"¹⁸ or "Dwell there without being owner," or "[It is yours,] on condition that you pay the price." And he who confesses to be one's parent may do so, unless reason or other evidence prove him false, as in the case of the one who says: "This is my son," while in fact they are of the same age, or the admitted son has another known father, or the heirs of the one who admits [being the father] produce reliable testimony to destroy his admission.

13. Arabic text: "... he may limit his admission to the least possible quantity" (5/369).
14. Arabic text: "... the least denoted by 'much' is ten darahim" (6/369).
15. Arabic text: "If he says 'many, many' the least amount is eleven darahim; if he says 'many and many' the least is twenty-one" (8/369). The difference between the two statements is given by the conjunction *and*. Guidi explains that saying "many, many" without the conjunction is to be taken as equivalent to two numbers which, in the Arabic system, are united without conjunction; these numbers are those between eleven and nineteen. By saying "many, many," the least it can be is eleven. Saying "many *and* many," is to be taken as equivalent to two numbers united with the conjunction *and*; these are the numbers between twenty-one and ninety-nine. Thus, by saying "many *and* many," the least it can be is twenty-one, *ibid*.
16. Following POEFNM 432-1.
17. Arabic text: "The one who adds to his admission of liability words which totally or partially negate ..." (1/370).
18. Arabic text: "It is yours, except the upper part ..." (2/370).

CHAPTER XL

ON WHAT IS FOUND AFTER HAVING BEEN LOST AND ON WHAT FLEES TO PUBLIC PLACES, SUCH AS THE COUNTRYSIDE, STREETS, MARKETS, BATHS, SHOPS AND CHURCHES

And this is established in the fifth [book] of the Pentateuch by the word of God, Who said: "Thou shalt bring back to thy brother what is lost, and if he is not near, and thou knowst him not, thou shalt bring it to thy house; and it shall be with thee until thy brother seeks it and thou returnest it to him, whether it is a beast, garment or any lost object. It is not good for thee to neglect them."¹

This chapter is divided into two parts.

Part I. It deals with things which move from place to place:

Whoever finds an object the owner of which is unknown and which has such trivial value that the owner would not notice the loss, shall give notice of the finding, announcing it for a week both at the place where the object was found and at another place. In case someone who can identify both the owner and the object comes, having no doubt that the identified person is the real owner, the finder shall return the object to him; otherwise, he may use it.

If the object is valuable and many are sorrowful because of its loss, it is good for the finder to take it and keep it for its owner. He shall ascertain its quality and quantity, the state of the object, and where he puts it; he must call people to bear witness for him and mention to them some distinguishing feature of the object, lest he give the devil occasion to seduce him, as Apostle Paul said.² And then he shall issue news [of the finding] every week for seven weeks in the place where he has found the object, if the place is inhabited, then to those who live near that place, and then at public places such as squares and markets. In the process he shall mention some peculiar characteristic of the object, as by saying: "Who has lost his darahim?" without giving any further details about quantity, weight or the size of the purse [in which they were found]; or "Who has lost some jewelry or dresses?" but he shall not give any details about their color, size or quality. If there is someone who comes and claims the lost object and remembers most of its characteristics, so that there can be no doubt that he is [the true owner], the finder shall hand the object back to him before witnesses, and in the presence of persons who know him; he shall produce a free member of the faithful³ as a witness.⁴ If within the said period of time the owner does not come to him, the finder may dispose of the object.

If a slave happens [to find an object], the announcing, the using and the ownership of the object belong to his master. If [the finder] is one under tutelage

1. Deut. 22, 1 ff.

2. Eph. 4, 27.

3. That is, neither a slave nor a minor (2 372).

4. Gloss: "before the judge."

and guardianship, the object goes to his guardian.⁵

It is good to extend the time of waiting [for the appearance of the owner]. If the object perishes in the finder's hands because of an evident [and unavoidable] accident, he incurs no liability. But he is liable if there is a reliable witness who testifies that he caused the object to perish.

If some companions were with the finder but he passed beyond them, and then took or ordered somebody else to take the object, the others have no share in it.⁶ But if one of his companions, either ahead of him or behind him, saw the object [simultaneously with him], he is his partner in keeping the object, in announcing its finding during the period of time fixed [above], and in owning it after the said time [elapses].⁷ If one who is not his companion⁸ sees the object [at the same time], the finder shall take the object to a judge;⁹ after the period of time for claiming, it shall be given back to the finder.¹⁰ If the one who has found the object is not an inhabitant of the country in which the object is found, it shall be deposited with the chief judge and his companion,¹¹ who may choose either to keep it carefully with remuneration and to announce it, or to take [and to keep it without remuneration]; the remuneration is in proportion to the duration of time, to the care it requires, and to the value of the object.

If the object found is a big animal, such as camel, a horse, a mule or an ass, which is found in a known pasture, it may not be taken. If it is wandering in the town, it shall not be left wandering; if it is possible to take it, it shall be returned only in the presence of reliable witnesses, or with the righteous testimony of two or three known persons. But if the found object is a small animal, such as a calf, a colt, a young ass, a young camel, a sheep, a bird or some similar animal, which is found alone, it must not be left to wander if it can be taken. The one who takes it shall choose to maintain it, either at his own expense during its announcing, if the animal is useful to its owner, or [at the expense] of its owner, who is then liable for debt [to be paid from the profit] if the animal yields any profit, or from his own account.¹² When the beast is returned to the owner, the finder shall

5. Arabic text: "If the one who finds the object is a slave, the announcing of the object found, the right of ownership and the disposing of it [when the owner is not found] are all matters concerning the master of the slave. If the finder is under tutelage, the tutor is entitled only to announce the finding and to keep the object, [since the right of property belongs to the ward]" (4/372).
6. Arabic text: "If he is in the company of others, the one who by-passes the object or does not tell someone to pick it up has no claim over it" (1/373).
7. Gloss: "if the owner is not found."
8. ስለሌላው ሰው: literally "who is not his companion," is interpreted as (1) በሃይማኖት ወይም በደረጃ: "one who is not his co-religionist," POEFNM 433-1; or (2) "one who is not of the same country" (4/373).
9. ገለጫ: ፍትሕ ፣ literally "one who is trustworthy in judgment," is taken to mean simply "the judge," POEFNM 433-1, or "the local judge" (5/373).
10. In connection with the first interpretation in note 8, *supra*, POEFNM 433-1 says that the judge shall give the object to the Christian finder if the object is found in a Christian place and to the non-Christian one, should the object be found in a non-Christian place.
11. In the absence of the chief judge, with his deputy (6/373); POEFNM 435-1. However, the Arabic text reads: "The finder may choose ..." (6/373). The Ge'ez could be rendered in the same way if ርእሱ ፍትሕ ወካሉ: "the chief judge and his companion," were read ርእሱ ፍትሕ ወካሉ ፣ "the chief judge; and the other (the finder)"
12. The Arabic text says that the finder may pay for the maintenance during the time in which he announces the finding, if the animal is useful to the owner. He may use the profit to feed it, if it yields any profit, or pay from his own account, which sum will be refunded by the owner (4/374).

collect from him, if he so wishes, the expenses he incurred and his reward for having kept it and having published the finding; he shall return it to the owner together with any offspring. If, with the approval of the judge, he wishes to sell the animal after a week, [he may sell it]; but he should wait for the fixed period of time [to elapse], after which he may dispose of the price. It is proper for him to buy a legacy for the needy with its price. He shall give first from the price to the afflicted,¹³ since the blood [they have shed] may be washed away by what he has put aside for them; or he shall give it as alms to the needy. If there is one who is needier, he should be favored.¹⁴

If the thing found is an object which becomes spoiled soon, it must be sold if possible. If it is food, it may be eaten. And if someone comes and ascertains after the period of time for claiming it [has elapsed] that the lost things belong to him, the finder shall give it back to him if it is still with him; if he has sold it, he shall return the price. In case the finder has used it for himself, he must give back the equivalent of the object if he is rich; if he is manifestly poor, he must give back only that which remains, and, if nothing of the substance remains, shall not be sued for anything. If he has given it away as a pious work, the owner may choose: either to have the merit of the pious deed, or to have the finder return to him either the whole object, a part of it, if it is still available, or its price. The word of the finder is final in every dispute which arises with the owner, unless the owner produces reliable evidence in the dispute. All that which is found is considered as a deposit in the hands of the finder.

Part II. The boy who is lost and then found:

Whoever finds a boy must declare him free,¹⁵ since to be free is a basic right of the children of the faithful. The boy has the right to be free,¹⁶ and this [freedom] is the original condition [for him],¹⁷ unless there are no faithful in the place in which he has been found and [the infidels] declare that he is their son; if the faithful are few, they shall be asked.

If anything is found together with him, [either] tied to him or put near him, it shall be deemed that it belongs to him,¹⁸ and the judge shall order an allowance to be made for him from it. An announcement shall be made concerning his being found and whatever was found with him. If nothing is found with him, and the one who has found him is a rich person, capable of maintaining him, he must take him and educate him. Otherwise, the judge shall order the administrator of goods for alms to take him, and the latter shall deliver him to one who will educate him, either at his own expense, if he agrees, or at the expense of the administrator, who will pay from the goods given for alms the amount necessary for educating and training in a trade. The same holds true if one finds a Christian

13. Gloss: "murderers." The reference is to condemned murderers, whose life might be saved by the payment of blood money.
14. The Arabic text says that if the one who has found the object is needy, he shall have priority in taking it (2:375).
15. Arabic text: "The one who is found thus must be considered as free" (3/375).
16. Gloss: "to be created free."
17. This merely repeats the preceding phrase.
18. As the term أشرك has two meanings, "to judge" and "to untie," the gloss refers to both meanings: (1) "[they shall judge] saying that he eats from it," or (2) "they shall untie it and spend it. . . ." The Arabic text reads: "One shall judge that it belongs to him, because it is the most obvious supposition, and they shall spend it for him" (1:376).

slave or an unbeliever who has not declared himself¹⁹ to be the son of an unbeliever.²⁰ And the one who says: "He is mine." and produces a reliable witness, whosever he may be, shall be given the child. The one who educates him must take him as his son, and teach him the trade which he prefers for his own children or a trade which appears to him suited to the boy's natural inclination: he shall watch towards what he inclines and what he desires. He shall take the child knowing the child's faith, and shall do as is proper to his religion.²¹

§. Part which comes after the preceding:

As for the one who brings a fugitive back to the one from whom he fled, whether the fugitive is his son or his slave or one who is under his tutelage, he who receives the fugitive must pay the finder what he spent for the fugitive. The finder may then choose either to leave [the compensation], in order to do a good work, or to take it from him. The remuneration due to him is measured by the fatigue caused him, the distance between the two places—that is, the place where he found the fugitive and the place to which he took him—and the period of time between the fugitive's loss and his return. And if the fugitive flees from the one who was returning him, the latter is not responsible, but must cause witnesses to bear testimony for him that he took the fugitive to return him to his master. If the fugitive is a slave or a pledge,²² payment and return [of expenses] are the obligation of the one who took it as pledge.

§. If one goes on a journey, so that his whereabouts and whether he is alive or not are not known, and something belonging to him is found, it shall be brought to the judge. The judge shall appoint a trusted and suitable administrator, who will take charge of the administration either voluntarily, to do a good work, or for compensation; he is to keep the absent person's object, collect what the latter has lent, pay his family's expenses, and pay his debt. And it is proper for him to disclose to witnesses what he has renewed and to keep an account of his administration. When many days have passed since the object was found, a judgment shall be given²³ among those who have rights to it²⁴ if the owner of the object is not alive; those who found it may divide and inherit it after the hope [of his return] is lost. They shall not divide what they have found until he is found;²⁵ nor shall they inherit or allow others to inherit the object.

19. Gloss: "if he is dumb."

20. Arabic text: "... and so equally [the foundling must be fed at the church's expense] if the one who found him is a slave or a fool or an unbeliever, unless it is found that [the foundling] is an unbeliever's son" (7/376).

21. He shall bring the boy up in the knowledge of the Christian faith; if the boy is not Christian, he shall convert him to Christianity and have him baptized, POEFNM 437-3 and (2 377).

22. Arabic ext: "If it is a slave given as pledge, the payment to the one who brings him back is at the expense of the one who holds him as pledge" (7/377).

23. Arabic text: "... it shall be divided" (3 378).

24. Gloss: "those to whom it belongs by inheritance."

25. That is, until news about him is received.

CHAPTER XLI
THE ONE WHO MAKES A WILL REGARDING HIS PROPERTY

The provisions laid down in this chapter are divided into five sections: the instrument¹ by which one makes a will and the writing of it; the name of the one who makes a will; the name of the one in whose favor the will is made; the property concerning which the will is made; the one who is appointed² [testamentary executor by the will].³

Section I. The will and the way it is drawn up:

TS 21. The instrument by which one makes a will with due counsel is the wish of a man to give as alms, after his death, that which remains of his property [after distribution of] what he leaves for inheritance.⁴ According to the sayings of the prophets and wise men,⁵ it is advisable to do this, since the prophet Isaiah said to King Ezechias, pursuant to the word of the Highest God:⁶ "Make a will to thy sons for thou shalt die."⁷ As for the wise men, many of them have willed away their wealth as alms to the needy; and there are those who have made charitable legacies, giving their property to the needy and the non-needy. As Apostle Paul has said, only a dying person may make a will properly: no use shall be made of a will while its testator is still alive.⁸

TS 21. A will may be made in writing or orally, with or without appointment of the one to whom the will is entrusted.⁹ A written will must be made by the writing of a notary, the one to whom it is entrusted,¹⁰ or the testator himself, and must be drawn up before witnesses who are present at that time. The writing of the will must occur in only one writing.¹¹ Those who are gathered there shall attest it. If possible they should be seven or five in number; if not, three or two witnesses will suffice. The testator, in case he himself writes down the will, shall

1. ገዢ : "goods, property, money, etc." here means "instrument," cf. Dillmann, *Lexicon Linguae Aethiopicae*, c. 675.
2. ቤተሰብ : literally, "the one who is commanded, or ordered," stands here for "the one who is appointed testamentary executor by the will."
3. Arabic text: "1) the will and the way it is drawn up; 2) the testator; 3) the heir; 4) the thing bequeathed; 5) the testamentary executor" (6:378).
4. Arabic text: "A will is a binding decision regarding what a man wishes to be spent from his property after his death, to the exclusion of the [legitim portion of] inheritance [determined by law]" (1 379). The legitim is that portion of the estate reserved by law to the heirs, see n. 42 *infra*.
5. Gloss: "the 318 Fathers of the Council of Nicaea, and others."
6. Gloss: "by the command of the Highest God."
7. Is. 38, 1. ለእኔ : ለደቀህን፣ literally, "command thy sons," is equivalent to "make a will for thy sons." It departs from the biblical text, which reads: ሠጠህ ቤተሰብ፣ "put thy house in order."
8. Heb. 9, 17. Gloss: "his will, however, is valid."
9. Arabic text: "... with or without the testamentary executor" (6:379).
10. Arabic text: "... written by a notary or the testator" (7/379).
11. The whole will shall be made *uno contextu*, or at one and the same time, Inst. II, 10, 3. The gloss says: "even if several copies are made, the contents shall be identical." Arabic text: "The notary shall write down the entire will in a single copy, and the witnesses shall attest it" (1 380).

is included therein,²⁰ unless that property is returned to its owner.²¹ TS 33; MAK 13. [A will shall be of no effect] if the appointed heir was not a Christian before he accepted the inheritance, at the time the will was made or after this time. [Similarly] the will is of no effect if the appointed heir schemes to take away the life of the testator with poison or some such thing. TS 25. A will is void if it provides [that the king] receive an inheritance from a subject, while the rightful heir is another; or if it is not written in a book with the witnesses therein, as said before; or, in addition to this, if it makes no mention of the one appointed [as testamentary executor] and of what is entrusted to him.²²

Section II. The testator:

A will made by a minor, by one who is not free, or by one who has not the use of reason and is not wise enough to make a will, as is laid down in the chapter on guardianship, is not valid. The testator must appoint one to take care of the heir if he is not wise and experienced; this appointment must be mentioned in the will. GALATIA 5. There is no difference between the heir and the servants as long as the heir is a child; while he is their master, he is nonetheless under the tutor and the guardian until the time appointed by his father arrives.²³ TS 21. A will made by one who is under guardianship, one who has not attained majority, a slave, one of deficient intelligence, or a [totally] deficient person shall be of no effect. If the tutor dies when the pupil is without tutor;²⁴ or if the slave is set free; or if the deficient has acquired the use of reason; or if a person is born blind or rendered such by an accident—[all these] may make a valid will.²⁵ MAG 22. One who was born dumb and deaf cannot make a will, but if he was afflicted thus by a sudden accident and can write down his will, it shall be valid. As for the demented, his will is not valid. Also, a slave is not allowed [to make a will] unless ordered [to do so] by his master.

TS 21. The one who is old enough to make a will and wants to make a written will in favor of his children, must make them know those whom he appoints as heirs. If he wishes to leave [something] to his wife, to extraneous persons by a written testamentary disposition, or to set [a slave] free, he shall make this known to his heirs [at law] in the presence of witnesses, so that they may testify to the fulfillment of his wishes.

If he wishes to change his counsel, turning back from it, he may tear the will and make a new one, in which he shall make known his new intentions. He shall do this in the presence of seven or five witnesses, informing them that he had this intention [previously] but that he does not wish to abide by it, and wants to make another [will]. Then he shall make a decisive will. TS 25. If a testator bequeaths property²⁶ [to one] and later on bequeaths it to another, without mentioning any

20. That is, if a deposit entrusted to the testator forms part of the inheritance, or, more probably, if there are debts contracted by the testator.

21. Arabic text: "... unless the creditors forego the debt" (1/382).

22. Arabic text: "A will is void if the heir appointed under it is the king while in fact somebody else ought to have been called to the succession, or if the way the will is written and the number of the witnesses is not in conformity with the aforementioned provisions and those on the testator, the heir..." (2/382).

23. Gal. 4, 1-2.

24. That is, if the tutor dies when his pupil has reached majority and thus has no need of another (2/383).

25. The Arabic text says that a will made by a pupil, a slave, etc. is not valid even if the former was not under tutorship and the latter was manumitted when about to die, etc. (2/383).

26. Arabic text: "... a piece of land" (1/384).

annulment of the first [decision], the two shall share the property between themselves. TS 22. Whoever makes a will may make additions to it or remove a provision from it, after he has made it, by writing in the presence of witnesses so that they may bear witness to it.

If the testator does not wish to make the contents of his will known to those who attest to his writing, he shall fold the will until [its top is] below [the writing];²⁷ having done this, he shall give it to the witnesses and say to them: "This document is my will." The witnesses shall then attest it together and seal it.

If it is obvious that the testator intended to mention other people [in his will] but did not finish his word,²⁸ even those mentioned in the will shall not be called to succeed. And if the testator and his brothers own some property jointly, none of them shall be prevented from disposing of his share by will. TH 12. If a man with two wives loves one of them but hates the other, yet both wives have borne him children and he wants, when he is about to die, to bequeath his property to his children, he shall not favor the son of the beloved wife to the disadvantage of the son of the wife he hates.²⁹

Section III. The heir:

MAK 5. The heir may not be one of those who have openly deviated from the divine laws and from the faith, one who worships another³⁰ besides the [true] God, or one who by his conduct has cut himself off from the behavior of the faithful in order to associate himself with sinners, because the Apostle has said: "What communion have the faithful with the unbelievers?"³¹ And he ordered the faithful to keep themselves apart from these and similar people, because they have gone over from faith to apostasy and to other vices, which are fornication and similar things. If they do not break [with those people], do not abandon [their sinful ways] and do not come back to faith, [they shall not be called to share the succession. But after they abandon their sinful ways,] they shall not be treated in conformity with what is said in the chapter on succession.³²

A will made for the benefit of all the heirs [at law], or some of them only, or for the benefit of another person [not related to the testator] is valid with respect to that portion of the estate³³ which does not form part of the legitimate inheritance. MAK 6. The heir shall still be called to the succession even if something happens to the will³⁴ or if it is unexpectedly taken.³⁵ Where nothing has happened to the will and no one has come [to steal it], if the heir declines to take anything and wants to give his share to some other persons, he may do so.

TS 30. The one who is in prison or in exile may make a will in favor of an heir,³⁶ hopeful that he may return some day. And if it happens that the heir

27. That is, he shall fold the will so as to cover what he has written therein. Alternative interpretation, in POEFNM 444-1: "He may keep it folded until his death."

28. Arabic text: "... and his talking was interrupted."

29. Deut. 21, 15.

30. Gloss: "idol."

31. II Cor. 6, 15.

32. That is, Chapter XLII, *infra*, in particular those provisions dealing with disinheritance of adulterers, shall not be applied to them (1/385).

33. Gloss: "one fourth of the estate."

34. "If it is lost or perishes," POEFNM 445-1.

35. "If it is stolen or robbed," POEFNM 445-1.

36. Arabic text: "The one who is in prison can be appointed heir" (4/385).

is put in fetters or exiled after the testator made a written will, the heir may take what was bequeathed to him upon his release or upon his return from exile. TS. If [false] news arrives of the death of a son who has gone on a journey, so that his father bequeaths his property to another because his son had gone on a journey³⁷ while in fact the son is still alive, the inheritance shall go to his son³⁸ instead of to the one to whom it was bequeathed.

§. One may bequeath something to a pregnant woman excluding the unborn child, or to the unborn child to the exclusion of the mother, but the will is void for the child unless he is born alive, within the time of pregnancy after the will was written in his favor. And if something is bequeathed to a pregnant woman and to the unborn child, and she gives birth to twins, they shall share it equally. If one of them is born alive and the other is born dead, everything shall be given to the one born alive. If the testator has made [particular] mention of and specified a male [as heir], no one shall inherit but that male.³⁹ A will made for the benefit of a slave is valid. If he is free at the time he becomes entitled [to have the inheritance], the inheritance is his; otherwise, it belongs to his master.

Section IV. The thing bequeathed:

The word of the will is void if the testator bequeathes what he does not own. There are two ways⁴⁰ of allocating the inheritance.

The first is: One quarter of the estate, and then another quarter—that which stands second [from the left] and third [from the right]—and another quarter—that which stands third [from the left]—go to the heirs at law;⁴¹ the last quarter is at the discretion of the testator, and he may do what he likes with it.⁴² This first way is in conformity with the canon in MAK 1. The children of the testator shall inherit according to the testator's wish; he shall give to each of his daughters her share of the dowry, and shall divide his property in four portions. If he wishes to give something of his property in alms, this shall be one quarter of it. From this, he shall assign one quarter to his daughters as their dowry; he may do what he likes with the remaining three quarters. His son shall inherit as he wishes since our law permits him [to do as he wishes] and provides that the testator's children succeed to three of the four parts of his estate; if the testator wishes to add something for his daughters, he may do so. If he has no children he may bequeath his property to whom he wishes. This canon contains the two opinions mentioned earlier, and the statement therein must not be accepted unless it is

37. Or, more logically, "... because of his son's alleged death, while in fact"

38. Gloss: "the one who was supposed to be dead."

39. Arabic text: "If the testator said explicitly that the heir must be a male ..." (4/386); this is then a device for excluding females. POEFNM 445-3 says: "If the testator says: 'I bequeath to A the horse I ride, my shield, etc.,' no one shall inherit it but the person thus designated."

40. Gloss: "[there are two] opinions."

41. The phrasing "... another quarter which stands second from the left and third from the right ..." is explained by Guidi using the following scheme: 1, 2, 3, 4; 2 is second from the left and third from the right; 3 is third from the left and second from the right (1/387).

42. The Arabic text says that there are two opinions on the amount of the estate one can dispose of as he likes: (1) that it be one fourth of the estate; (2) that it be three quarters of the estate. The last is the best opinion (1/387). The second opinion, considered as "the best," refers to the *Lex Falcidia*, which provided that the testator could not dispose of more than three quarters of his estate in legacies and secured one fourth to the heir at law. Inst. II, 22; Dig. XL, 2. According to the provision in the above passage, the heirs at law shall have three quarters of the estate; the remaining one fourth is left to the discretion of the testator. This is consistent with the "first opinion" of the Arabic text.

clarified [by MAK 10, MAK 15 and MAK 95].⁴³ This canon is not advantageous to any [person] unless interpreted on the footing of [the canons of] the second opinion.⁴⁴ The concept therein is not clear, and [the statement found in] a single canon must not be given more [weight] than that found in the other [canons, that is, MAK 10, MAK 15 and MAK 95].⁴⁵

As for the second opinion, the canons referring to it deal with diminishing [the portion due to the heirs at law].⁴⁶ MAK 10. A man may divide [his property] in three [parts] and give the fourth part of his property to the one he loves; he must set aside a quarter of his estate for his heir [at law], without adding anything else.⁴⁷ MAK 15. He may do what he wishes with the three parts and he shall give the fourth part of his estate to whomever [of his heirs] he wishes; this fourth part he may divide among his children who obey him. 95. If a person has made a will regarding his property [and if] the fourth part [reserved to his heirs at law] is not established, or is less [than one fourth of his estate], he shall establish it and make it [of proper size, using the remaining] half and quarter [of his estate]. This [last] fourth part [may be bequeathed as legacy] to non-relatives. If a dispute arises [because of this legacy], the matter shall be examined. [In all cases] a fourth part of the testator's estate must go to his heirs [at law]. If one fourth is not established [for the heirs at law], the half as well as the fourth part [for the non-relatives] shall be destroyed, and an inheritance [for the heirs at law] which consists of a fourth part [of the whole estate] shall be established with them.⁴⁸

43. Thus following POEFNM 447-3. It may also be rendered as follows: "... and the statement therein must not remain without being clarified." Arabic text: "This canon contains the two opinions [about the portion left at the disposal of the testator], but the meaning therein is not clear" (2/387).
44. According to the gloss, the figure § "2," must be read as "second."
45. The Arabic text says that as the canon is not clear, one cannot tell which of the two interpretations is preferable (1/388).
46. Arabic text: "As for the second opinion, the tenor of the canons is ..." (2/388). As noted above, n. 42, this "second opinion" comes from the *Lex Falcidia*, which provided that the testator might dispose of three quarters of his estate, securing one quarter to his heirs at law. According to the traditional interpretation, found at POEFNM 446-1, *passim* and (1/387), the "second opinion" is as follows: one fourth to the church, one half to the children, and one fourth at the testator's disposal. Because of this interpretation, which is entirely unsupported by the Ge'ez text, renditions inconsistent with the Ge'ez text have cropped up in several passages of POEFNM and Guidi's translation. For example, the introductory passage of this Section (IV) runs: "The word [of the will] is void if the testator bequeaths what he does not own," but the POEFNM 446-1 comments: "The will is void if the testator does not provide that one half of his property goes to his children, one fourth to the church and one fourth to whom he likes." Where the text says: "... a fourth part of the testator's estate shall go to his heirs at law," (*infra* before note 48), the POEFNM 448-2 paraphrases: "In order to make his will valid, the testator's children shall be three and his estate shall be divided into four parts: the testator shall provide that one half of his estate go to his children, one fourth to the church and one fourth to whom he likes." And where the text says: "[They] fixed no limit except that the testator should be guided by what he deems appropriate when he makes his will" (*infra*, following note 53), the POEFNM 450-1 says that the 318 Fathers dictated that the right way of disposing of one's property is to will half of the estate to his children, one fourth to the church and one fourth to whom he likes.
47. The Arabic text states, more clearly, that a testator may dispose of three fourths of his estate as he wishes, but must put one fourth aside for his heirs at law (2/388). This "one fourth" is the *quarta Falcidia*, Inst. II, 22, pr., 1, etc.
48. Arabic text: "If a person bequeaths a legacy to non-relatives, the matter shall be examined: If he has left one fourth to his heirs at law, then the legacy is valid. But if the heirs' share does not reach the measure of one fourth, something must be taken out of the half and the other fourth part of his estate to increase the inheritance of the heirs at law so that it may reach the measure of one fourth of the inheritance" (6/388).

GLOSS: Question: may a man bequeath all his property to his wife who bore him no children? and if he has two children mentioned in the will, should he leave [something] to her or should he bequeath to her something apart from her dowry? The answer is: a man must write his will and put there the names of the persons he wants to be called to his succession.

Our assertion that the second opinion is [more] advisable is based on eight considerations:

i. As both opinions are found in one book and from one counsel,⁴⁹ but the second opinion is more clearly explained in more than one canon, namely, at the beginning, middle and end of the book,⁵⁰ while the first opinion is found in one canon only, [namely MAK],⁵¹ and is the opinion of the author of the book. This is known from the harmony of the words [of the second opinion] with those found in several places.⁵²

ii. The interpretation of the wording of the first opinion is not clear, since it gives rise to two different concepts, while in the wording of the second opinion only the concept of the second opinion is found; one must follow what he understands more clearly.

iii. The first opinion is found at the beginning of the book, while the second is found near the beginning of the book, in the middle, and at the end; the later provisions nullify the first.

iv. It is said in this book that a man may do what he likes with his property, and he is allowed to dispose of half or a quarter of it, and to do what he wishes without any impediment.

v. We have already said that a will shall be according to the commandment of God and the practice followed by wise men. God has said: "Make a will to thy children." That is all He said; He has not fixed [the portion] by saying [to leave] less or more. And the wise men,⁵³ when they established that one may lay down his word in a testament, fixed no limit, except that the testator should be guided by what he deems appropriate when he makes his will. It is obvious, then, that the advantage offered by the second opinion is greater.

vi. Reason dictates that a wise person be allowed to do what he likes with his property, because he is the master, and there is no one who can prevent him from selling it, bequeathing it, giving it away as alms, or giving it to whomever he likes; in doing this he may dispose of the half and the quarter of his property.

vii. More benefit derives by adhering to the second opinion than to the first, because one who adheres to the second opinion may follow and be guided by the

49. That is, "and are from one author," POEFNM 449-1.

50. According to the glosses, the beginning, middle, and the end of the book are MAK 10, MAK 15, and MAK 95 respectively.

51. Thus in the gloss.

52. If it is taken that ⲉⲧⲟⲩⲟⲩ : "is known," has for its subject ⲉⲛⲟⲩ : "opinion," the above passage might be consistent with the Arabic text, which says that the ideas of an author are discovered by the consistency of the clear and frequently repeated passages found in his book (1/389). According to the gloss and POEFNM 449-2, the passage might also mean: "It is obvious that the second opinion should be held preferable, since its provisions, clearly explained in several passages, agree with reason."

53. "The 318 Fathers of the Council of Nicaea," POEFNM 450-1.

first in his judgment if he sees any advantage in it; while [the one who follows] the first [opinion] may not do so if he sees an advantage in the second opinion.

viii. Adherence to the first opinion entails much damage; the second opinion does not, because it is possible that some of the testators' children will be rich and the rest poor, and it is right that the father bequeath more to the poor. It is also possible that his heirs at law will be rich; [in such a case] he may leave a charitable legacy or give alms, and thus free many people [from poverty and slavery].

Finally, the reason for the tendency we mentioned to prefer the first opinion [over the second] is that the testator [who follows the second] might be hated by his heirs [at law], because of [supposed] injustice [in their regard];⁵⁴ or because of jealousy [on their part]; or because he has preferred others [over them]. Also, by following the second opinion, there is the possibility that the heirs might be prevented from [having] the greater part of the whole [estate]. But all this [may be done also by] the testator [who follows the first opinion], since he may do as he sees proper either by giving what he wishes to people [other than his heirs] with his hand, or by selling something to them,⁵⁵ or by confessing to be indebted to them [to the extent] he wishes, or by selling something to others [so that he may give the proceeds of the sale to the former].⁵⁶ But when the matter is settled according to the second opinion, it is well settled.⁵⁷

The testator must bequeath a half of the quarter to those who fear God; above all, he must fear God, since he will find himself face to face with death. And he shall not give a half or a quarter of his property, except to those who are entitled to it, namely, his children, the children of his children, his relatives, pilgrims,⁵⁸ the most needy of the needy, or the worthy rather than the unworthy. And he must be a loyal and wise administrator so that he may be worthy of praise and receive his reward from the heavenly Judge — to Him be praise! BADAS. A Christian must not spend his property where there is no salvation.

A testamentary disposition regarding a portion in excess of the half and the quarter of his estate [at his disposal] shall be of no effect unless the disposition favors his heirs [at law, who are entitled to inherit] after his death.⁵⁹ And what he gave in his lifetime (such as manumission [to a slave], a charitable legacy, alms, or donations) either when he was healthy or during a sickness (however, not a sickness which causes intellectual deficiency) shall not form part of the half and the quarter [of the estate left at his disposal].⁶⁰

54. Gloss: "as they will blame him and say that he was unfair to them."

55. By pretending to sell something to them.

56. The passage as from "Finally, ..." is very obscure in the Ge'ez text. It is rendered on the footing of the Arabic text, which gives the following sense: The main argument in favor of the first opinion is that the testator may hate his heirs at law unjustly, and, by following the second opinion he may defraud them of a greater amount. It is answered that in the first place this seldom happens; moreover, even if he follows the first opinion, he may do what he wishes with his property, all the time pretending to follow the said opinion (1/391). It is to be noted that the Arabic text says that "the testator may hate his heirs," while in the Ge'ez text it is the heirs who may hate.

57. This is another ambiguous passage. በዝንቅ: "according to this," seems to stand for "according to the second opinion."

58. እናገድ ፣, "pilgrims," may also mean here "other members of his clan."

59. Testamentary disposition of the *quarta Falcidia* in favor of non-relatives has no effect. Arabic text: "... it is null unless ratified by the heirs at law" (2/392).

60. Gloss: "what he gave away as a vow or as alms shall not be included in the property to be shared."

TS 25. If a person has [a child] after the will has been made, the inheritance shall go to the one entitled to it, whether it be male or female.⁶¹ If a will is made without [mention of] the children, it is of no effect, because it transfers [the succession] from the children [to non-relatives]. If those who are entitled to inherit are found among the male and female children, and if the will was made in favor of one who is not [the testator's] child, it is void, after the testator's death, with respect to the one in whose favor it was made. It is proper that the children's children inherit [from their grandparents].⁶² If the persons found who are entitled to succeed the testator are his relatives, and the will was made in favor of non-relatives, the former shall succeed to the half of the property; if [the previously appointed heirs] were his relatives, the succession shall be divided equally between those relatives and the ones who were found. And the position of the former heir with respect to ones who were found shall be determined by this rule.

35. If the testator bequeaths a flock of sheep to his heirs, and the sheep multiply, it is to their benefit. Similarly, if the flock is diminished, until only one sheep remains, or if completely destroyed, the loss is theirs. If the testator leaves a house to the heir and it burns down, the land belongs to him. And if the testator bequeaths a slave and his profit to you,⁶³ but sets him free after making the will, or exchanges him for another, or sends him away to other parts, or the slave dies, then neither that slave nor his profit belong to you; if there are no roots, nothing connected with the roots can be left.⁶⁴ And if the testator leaves any part of his estate to his heirs, for instance a third or a fourth of it, and then half of his estate is lost, the heirs shall receive one third or one quarter of what is left. If the testator has left to a person some part of his property, specifying its quality, the heir at law may not prevent this person [from taking] what was destined for him. But if the testator has not specified [its quality], and his estate was made up of various things, the heir may choose, either to give the person a portion of the estate — provided that he does not choose a bad portion, but rather a portion of middle value — or to give him the price it fetches. If it is an object which cannot be divided, he shall give him the price without quarrelling about its value.

§. The testator may validly bequeath to one the ownership of an object and to another the benefit derived from that object, such as its fruits or other profit, like rent, wages, service for one, two or three years according to the terms of an agreement, product yielded in one season, or rent for a definite period of time.⁶⁵ After this the use of the object is to be returned to the owner, [that is, to the one] to whom the testator bequeathed it. If one to whom the testator has bequeathed the benefit dies, the benefit shall not devolve upon his heir. The first owner shall have the right to set [the slave] free, to sell or give him away as alms, or to give him to someone else after the period fixed for the benefit of the [second] owner⁶⁶ expires.

61. Or, "if someone begets a child after he made a will [in favor of another], the inheritance goes to the child, whatever it is, a male or a female" POEFNM 452-1.
62. The last part of the passage adheres to the POEFNM 452-1 rendition. Arabic text: "If the will was made to the benefit of the children, the one born after the making of the will shall have a share of the succession. If those entitled to be called to the succession were male or female children of male children in particular and if the will was not made to the benefit of a child, it shall be void" (6/392).
63. According to the gloss, "profit" means the children of the slave.
64. If the father (root) is set free or exchanged for another, the heir has no claim over his children (profit).
65. The gloss adds; "if he says: 'this slave, after serving for a definite period of time, shall be returned to the heir.'"
66. The beneficiary of the usufruct (text/394).

It is also valid to make a will bequeathing a woman slave to the exclusion of her unborn child, or to bequeath only the unborn child to the exclusion of the slave. If the testator bequeathes to his heir a pregnant slave without making any mention of the unborn child, or made the will before she became pregnant, both the woman and the unborn child belong to the heir.

Section V. The administrator appointed by the will:⁶⁷

He must have two qualities: loyalty, and [ability in] the administration of that over which he has power. If the testator himself has not specified a person [to be administrator], the judge shall appoint one after his death. If the administrator does not have the required experience,⁶⁸ his appointment is valid for certain matters only, to the exclusion of others; if the testator wants to entrust his entire estate to [such] an administrator, he must appoint two.⁶⁹ Neither of them shall act without the order of the other, nor shall either of them usurp the duties of the other. And if it is said: "either the one or the other," the one who accepts the appointment first or administers the estate first is the one who commands and not the other. If it is said: "A, and after him, B,"⁷⁰ the second may assume the administration only if the first leaves it; the orders of the second shall not be accepted [unless this occurs].⁷¹

After the administrator actually has assumed the administration, he must accept the will, and shall not leave his duties under it before the heir attains majority and is well trained. Or, if he refuses, the heir may bring him before the judge who shall reconcile them; the judge shall release the administrator from his duties [only] if he finds someone to replace him, or if the administrator tells the judge the reason for his refusal, which may be a prolonged illness, imprisonment that lasts a long time,⁷² a journey to distant places, or exile. The judge shall not release him if he cannot replace him with another loyal and experienced administrator, or shall release him only after fixing a definite period of time after which he shall come back and take over the administration.⁷³ Once released, the administrator shall not retake the administration. The administrator released on one of the grounds mentioned earlier may retake the administration with the permission of the judge. If the person appointed by the judge is a true and firm believer, loyal, experienced, and a relative of the heir, he is the proper person to be appointed administrator. The judge shall appoint as administrator a relative of the heir, so that a kinsman may administer the property of his kinsman.

MAK 15. A man may authorize his son to make his will, give him power over his property, and appoint him administrator of his succession. 13. He may entrust the administration of his succession to his slave, who must do whatever the master would normally do. 99. If a woman makes a will in favor of the children

67. That is, the testamentary executor.

68. Following Guidi's rendition (text/395). But the Ge'ez literally reads: "If the heir is lacking in intelligence, the testamentary disposition [in his favor] is valid for certain matters only to the exclusion of others." Compare the Arabic text in the following footnote.

69. The Arabic text says that one may appoint an administrator for a part of the succession, or for all of it, and also may appoint two administrators if the heir is somewhat demented (3/395).

70. Gloss: "up to here, A, and after him, B."

71. The Arabic text says that the second person may take over the administration only if the first one is released or does not accept the office (5/395).

72. Gloss: : "imprisonment," is also taken to mean ተባብሮት "monastic life."

73. The gloss says that his replacement shall take over the administration by saying "[I] shall serve until this time."

of her son, she may not appoint another as administrator and guardian, because their father is the proper person to be appointed to such duties. If they have no father to take over the administration and guardianship,⁷⁴ she must appoint an administrator and one who takes care of what she bequeathed to them. MAG 12. If someone dies intestate, leaving children,⁷⁵ and is survived by parents and brothers, the parents shall have power over his succession⁷⁶ and shall administer it as if they were duly appointed. The brothers [of the deceased] may not share [the succession] with his children, nor may they oppose their parents.

[GLOSS]: It is obvious that the term "Azazy" in this [section] does not mean "Awrasī" [the testator], but the administrator, because both could not be called "Azazy".⁷⁷

MAK 3. If one writes the name of the heir and of his administrator in the will, [the judges] shall divide his succession among his children, and the administrator shall not be given anything. If the testator did not make a will,⁷⁸ and his heirs have a brother over twenty-five years of age, the latter shall be appointed administrator. If they have no elder brother, the wisest of their paternal uncles shall be appointed administrator and overseer⁷⁹ [of their affairs]; he shall maintain them with the estate left by their father, according to their needs, and make a written inventory of everything left them by their father. An account of everything shall be kept in a book. If they have no wise paternal uncles, the wisest of their paternal cousins over twenty-five years of age shall be the administrator. If they have no paternal cousins and their mother wishes to manage their affairs herself, she shall make this known to the judge, who shall make her take a vow not to get married until the children grow up; when they have grown up, she shall give them their inheritance.

If she does not wish to assume the administration, our law provides that the elders of the city must appoint guardians and administrators⁸⁰ for orphans and agree with them about the compensation to be given them, in proportion to the property left by the deceased. After [agreement is reached], the administrators shall take everything handed over to them by the elders. They shall look after the orphans' property carefully, until they transfer it to them upon their attaining majority.

The heir shall not require the administrator or the overseer appointed by the testator to produce a guarantor for his administration, because it was the owner of

74. Arabic text: "If they have no administrator or testamentary guardian, then the grandmother may appoint ..." (6/396).

75. That is, children who have not attained majority.

76. Gloss: "his brothers shall not say that they will not take care of his succession."

77. Both the terms ለዛዚ ፣ and ለውራሲ ፣ mean "testator." Occasionally ለዛዚ ፣ is used in this section in the meaning of "administrator." The Ge'ez translator has had the care to insert this explanatory note in order to warn the reader not to confound the ለዛዚ ፣ "administrator" in this section's context, with the ለውራሲ ፣ "testator."

78. Following the literal meaning of the Ge'ez and the rendition at POEFNM 455-3. Guidi translates this as: "If the testator did not appoint [an administrator in] his will, ..." (text/392).

79. ኩናጊ ፣ here "overseer," is defined in a later gloss as an administrator who supervises property in the countryside.

80. Guidi says that in this case መጋቢ ፣ "guardian," also connotes a person who manages home affairs; while ለዛዚ ፣ "administrator," connotes one who manages property in the countryside (4/397). Thus, on his interpretation, ለዛዚ ፣ has the same meaning as ኩናጊ ፣ note 79 above.

the property who entrusted the administration to him until his son attained majority. MAK 2. The male remains under the power of the administrator until he is fourteen, and the female until she is twelve years old.⁸¹ Once they attain these respective ages, they shall be freed from his power, and come under the power of the overseer until they become twenty-five years old, whereupon they will be able to manage their own affairs.

One may be released from the duty of administrator on two grounds. The first is: 14. If a person has five children, male and female, and wishes to avoid being appointed testamentary administrator for his relatives or orphans unrelated to him, he may be excused;⁸² but if he has less than five children, the judge shall compel him to be administrator or overseer for relatives and unrelated orphans. The second is: 100. One who is administrator for orphans may not be released from his duties if he clearly accepted the testamentary disposition and some unforeseen calamity befell the property entrusted to him. 103. The administrator⁸³ appointed for the benefit of orphans may, with the permission of the judge, delegate some other person to look after their property.⁸⁴

MAG 14. If it is ascertained that the testamentary administrator has failed in his duty to the orphans, neglecting their custody, what is left of the succession shall be entrusted to the administrators of the church until the orphans become adults. God forbids the administrators to spend the property entrusted to them unduly and make the orphans fall into misery. MAK 7. The administrator or the guardian may not sell anything that belongs to the orphans, give tribute, or pay off debts without the authorization and order of the judge to sell; but with the proper authorization he may sell enough to give tribute or pay off a debt.

90. A soldier or a minister of the king may not be appointed guardian and administrator for orphans unless he leaves the king's service.

The end of the next chapter on succession deals with the wills of bishops, monks, slaves, and manumitted slaves.

GLOSS: The Patriarch Abba Querillos and his bishops have enunciated rules on succession different from those found in this chapter.⁸⁵ Those rules, too, are acceptable, because they were made by some of the former patriarchs and by wise men; one may follow those rules.

81. The gloss indicates that the four years necessary to wean a boy and the three years required to wean a girl must be left aside; therefore, boys attain majority at eighteen and girls at fifteen. See also (2/398).
82. *Excusatio* on account of the children, Inst. I, 25, pr.
83. Gloss: "bishop."
84. The Arabic text says: "[The administrator may delegate another] to bring the heir's property, the heir's rent ..." (2/399).
85. See the Appendix to this book.

CHAPTER XLII SUCCESSION

This chapter consists of thirteen sections.

Section I. The first thing to be done with what is left (that is, what is found of the deceased's estate), and the number of days during which the heirs are protected from claims attached to their inheritance:

MAK 34. The cost of wrapping the dead body, the wages of the grave diggers, and the price of the grave [shall be deducted] initially. **TS 32.** Provisions regarding the expenses of the funeral and the celebration of the fixed [number of] masses which follow the funeral are found in the chapter on the dead.¹ **RSTA 79.** [After the said expenses,] you shall give from the estate of the deceased to the poor, so that it may be a commemoration for him.

GLOSS, which is found in the canons of the Apostles, [and which is] the precept of Peter, Paul and James: They shall give alms to the poor from the property of the deceased [who were] good Christians, but not from the estates of apostates and the wicked. And so in [canon] 60. The following is found in the canons of the Kings: The one for whom the day of his death has arrived must leave something from his property by will to the poor, so that he may have remuneration on the day of judgment; a man shall not leave [anything] except that which he gained justly.²

MAK 95. The tributes and debts which are imputable to the deceased should [then] be paid from the estate. **123; 125; MAG 12.** If the property left is not sufficient to pay off the debts, the heir shall not pay the debt³ and the loan [incurred by the deceased] if he does not take the inheritance. If the heir accepts the inheritance, he must keep it separate, put the amount in writing, and show the amount to the creditors; he shall give to each in proportion to what is due to him.⁴ And if he accepts the inheritance and spends it by giving it away [to others] or in some such way; or if he hides it and does not reveal [where it is], desirous that the creditors remain deprived of their belongings; or if he has given them [only] half of it, then he must pay all that is due to them, after the debt is ascertained by a reliable witness. After the payment of the above, the debt the deceased has contracted with God, as by a vow, shall be discharged. And after this the heirs shall fulfill the precept of the law.

We have dealt already with the testator, [saying] that, in his will, he may not dispose of more than a half and a fourth part of what he owns; the fourth part shall be set aside for the one who is entitled to inherit it and the testator may not dispose of it.⁵ **TS 31, 36.** None may claim anything from the heirs of the

1. Chap. XXII.
2. "His bequests must be from those things that he has gained by going up and coming down, by working and toiling, but not from what he has gained by theft or duress," POEFNM 458-1.
3. $\delta\lambda\gamma$: "debt," is to be understood as tribute, taxes, etc. (2/401).
4. Arabic text: "... in proportion to what is possessed by the heirs" (4/401).
5. This is an allusion to the *Lex Falcidia*, *supra*, p. 227, n. 42.

deceased or from his family or from his guarantors, before the end of the nine days during which the heirs are in mourning; none shall harm them in any way, or produce them before a tribunal, either for a loan or a debt incurred by the deceased, or sue them for other causes. And if before nine days expire there is one who dares sue one of them, or to use violence against them, or their guarantor, by taking any of their property, his act is void. But after the lapse of the said time, one may sue them in accordance with the law.

Section II. The complete exposition explaining the provisions on succession and the order of the heir's degree:

There are two ways of coming into succession: The first regards the one to whom, with other heirs, a specific portion is left by will;⁶ the provisions regarding this [way] are six in number. Half of the estate goes to the wife and the heirs of her husband, if the heirs are not her children. [If they are her children,] her share shall be equal to that of each one of the children, and the children shall get equal shares. The same rule applies to the husband. The brothers of the deceased receive a third part, together with his mother; the same rule holds true in the case of their children, who shall inherit with the mother. Similarly, the grandfather of the deceased and the paternal grandmother are entitled to a third part of the estate together with his brothers and sisters.

[As for] the second way, the estate is assigned to the relatives and to the paternal family, males and females, prior to the maternal relatives.⁷ And the number of the heir's degree shall be as provided in the canons of the Kings and the complete determination [laid down by law];⁸ there is nothing which has not been mentioned in the canons.⁹

As is said in the canons, the degrees are twenty-two [in number]: First degree: The children of the deceased, males and females equally. Second: Male and female [children] of the male children equally, each one according to his degree, degree after degree. Third: The father. Fourth: Blood brothers of the deceased, his sisters, and his mother equally. Fifth: The half-brothers and half-sisters who are from the side of the father. Sixth: The half-brothers and half-sisters who are from the side of the mother. Seventh: The male and female children of the deceased's brothers, equally. Eighth: The male and female children of their male children, each one according to his degree, degree after degree. Ninth: The father of the deceased's father. Tenth: The mother of the deceased's father. Eleventh: The father's brothers. Twelfth: The male and female children of the father's brothers, equally, each one according to his degree, degree after degree. Thirteenth: The male and female children of the deceased's daughters, equally, each one according to his degree, degree after degree. Fourteenth: The male and female children of the deceased's sisters, equally, each one according to his degree, degree after degree. Fifteenth: The male and female children of his sister's children equally, each one according to his degree, degree after degree. Sixteenth: The male and female children of the father's

6. The Arabic text says that the first part deals with those who, together with the heirs, are entitled by law to a fixed portion of the estate (2/402).
7. Arabic text: "The second part deals with those to whom the inheritance is assigned on the basis of the nearest relationship" (6/402).
8. POEFNM 460-1 refers to the rules enunciated by Abba Querillos (See the Appendix at the end of this book).
9. Arabic text: "[Their number] shall be according to the rules laid down in the canons of the Kings, and in case there is nothing specific in the canons, according to what has been arrived at by analogy" (1/403).

brothers' children, each one according to his degree, degree after degree. Seventeenth: The sisters of the deceased's father and their male and female children equally, each one according to his degree, degree after degree. Eighteenth: The father of the deceased's mother. Nineteenth: The mother of his mother. Twentieth: The brothers of the deceased's mother, their male and female children equally, each one according to his degree, degree after degree. Twenty-first: The sisters of the deceased's mother, their male and female children, equally, each one according to his degree, degree after degree. Twenty-second: The parents of the grandparents; after them the near relatives and the far relatives, since the law of succession proceeds in such a way that the close relatives and removed relatives may inherit.¹⁰

You shall give priority to the degree of the deceased's children and to their children over the degree of the deceased's father. You shall also give priority to the relatives of the father over those of the mother, and males shall inherit before females in the degree of the father's brothers and of the mother's brothers and the grandparents; the above-mentioned males and females shall be equal,¹¹ and those who are full brothers shall inherit before those who are not full brothers. Each degree of the fixed and arranged degrees which we spoke of above is [distinguished] in order that one of those who should come after will not inherit together with those who should come before,¹² unless he is called by the will to inherit with them. And if there is one who is distinguished from these heirs,¹³ he shall inherit all the property of the one who has appointed [him] as the universal heir. And if an heir is united with the others by will, he shall take what remains after the will [has been satisfied].¹⁴

Section III. On what a husband inherits from his wife and a wife from her husband:

The reason for the precedence of a husband and a wife in being called to the succession is that they are the source of others, by virtue of their union in accordance with the law of marriage; by marriage, children are born and parents are called fathers, and by marriage they are one flesh only, as God has said.¹⁵ One is entitled to the property of the other.

GLOSS: It is known that [this succession as between wife and husband takes place] if there are no parents, grandparents, children, grandchildren, brothers, father's or mother's brothers, or children of any of them.

TS 30. If a husband or a wife dies without having written a will, and does not have a natural heir among either his ascendants, his descendants, or his collaterals, then the husband is entitled to all the wife's property, and similarly the wife is entitled to her husband's property. At the end of his collection, the Patriarch Abba Gabriel has said: "If there is a wife who has children, she shall be counted as one of them, because the Didascalia has said: 'Give the orphans the property

10. The Arabic text says that next to all these, the nearest relative inherits, since the succession is arranged in such a way that the nearest relative will be the heir (2/404).
11. That is, the "male and female children" referred to "equally" in several of the enumerated degrees (3/404).
12. For instance, in order that those in the second degree may not inherit together with those in the first degree (4/404).
13. **ⲙⲧⲗⲁⲙ**: "distinguished," in this context means "specifically designated as heir."
14. That is, if it is stipulated in a will that a legatee shall share in the estate with others besides taking a specified portion, he may do so after deducting his own special share, POEFNM 462-1; (text/404).
15. Gen. 2, 24.

of their parents and the widows the property of their husbands.'" This statement says to give the inheritance of the deceased to his children and to his wife. If no distinction is made [in the amount] to be given to each, they will all be equal. And also, if one of the married pair dies and leaves heirs other than his wife, but has no children to succeed him, it is customary that half of the property which he left go to his wife and the other half to those who are entitled to inherit. This custom is also in accord with what is said in MAK 51. As for those who are betrothed, if a man is betrothed to a woman and dies before marrying her, half of the property he previously gave her shall belong to her, and the other half to his relatives; but if he has no heirs besides her, she shall have all the property. At the end of his collection, in Part 2, the Patriarch Abba Gabriel has said: "This rule, and teachings like it, shall be applied to one of the two as well as to the other, because God has said to man: 'Let us make for him one who may help him,'¹⁶ and also He has said that they shall be only one flesh and not two."¹⁷

The husband shall inherit from his wife in the same manner as is established for her inheritance from him, [that is,] she takes half of her husband's estate, and [the other half goes] to his relatives, provided that there are no children; [but if they have children,] the wife and the children shall have equal shares. And if they have neither children nor relatives, the wife shall inherit everything. If between the husband and the wife there is a relationship [by consanguinity], the provision about the quantity shall be that each one of the two shall inherit from the other two parts—one part because of marriage, and the other part because of relationship. And in the chapter on the law of marriage there is another canon; it is MAK 51: If the husband dies, the wife shall keep all her wedding outfit and half of her dowry, and if the wife dies and the husband survives, he shall have all her dowry and half of the wedding outfit she brought, whether the wife had children from him or not.

89. If the husband dies and the wife has not had children from him, she shall have her wedding outfit and half of her dowry. If her outfit is old and spoiled, she shall receive the price of the dresses which she brought with her, on the basis of the value the dresses had when she came wearing them. And if nothing remains of the outfit, the writing which shows the amount of the price shall be consulted: the price shall be known from the writing between them, both as to the dress which was dyed¹⁸ and whose price is known, and as to the other objects which she brought. If among her dowry there were men and women slaves, she shall take them if they are alive; if they have been sold, she shall take the price. But if they are dead, she shall not take the price, nor any ransom, since they are mortal by their nature. If the men and women slaves have children, she shall take half of their children: the other half shall go to the heirs of her husband. In the same way, if she has brought with her a flock of sheep or cows or [other] animals which multiply, they shall belong to the wife if they are alive and have not multiplied; but if they have multiplied, she shall take half of those born, and if those she brought originally are dead, she shall take half of their offspring. The same disposition holds true for bees and similar things.

GLOSS, from the [book of the] Kings: 80. Half of the animals born must go to the husband, because the expenses necessary for maintenance [of the beasts] were taken from his belongings. If one of the betrothed couple dies

16. Gen. 2, 18.

17. Gen. 2, 24.

18. The Arabic text speaks of gold objects (11/406).

before marriage, the provision concerning him has already been laid down in the second part of the chapter on marriage, on the earnest of the betrothed couple.

Section IV. On the rule of succession, which is made up of two degrees:

First degree, on the children who inherit from their father,¹⁹ which is the first degree of the heirs.

The reason why the deceased's children are given priority over his parents in inheriting the property is that the parents are the cause of the coming forth of their children and of their existence. [The cause of] their existence must be also the cause of their welfare, and this welfare is attained by wealth. And also, because the children, who receive life, hope to live, while their grandparents are about to be separated from life; since life, with its advantages, is maintained with wealth, then the children are more entitled to be called to the succession than their grandparents. For this reason the succession goes down from the ascendant to the descendant, and does not go back from the descendant to the ascendant unless there are no descendants and will be no descendants for a long time.

GLOSS: It is known that the old in age die before the young, because it is a law of nature.

And also, since the memory of the fathers lives through their children, then it is proper that the latter inherit from the former. The reason why the daughter is entitled to inherit as well as the son is found in the New Testament, and not in the Old Testament; Apostle Paul has said that man and woman are only one thing in Christ. In being called to the succession they are also equal. Their equality lies in the fact [that they have an equal relationship] of filiation; the portion of each child must be like that of each other. The reason for the priority of children over the children[*'s* children] is that the former are closer than the latter.

MAK 1, 87. Whenever one dies intestate and leaves children, the males and females shall inherit in equal measure, **MAK 7**, be they full [brothers and sisters] of the same father and mother or not, **TS 30**, be one of them deaf or dumb or not, or be they close or not.²⁰ **TS 30; MAK 87.** If a daughter marries after she has taken her wedding outfit from her parents, her outfit shall be considered as part of her share regardless of whether the father stipulated so during his lifetime or not. And it is agreed in the Church²¹ that if the outfit is worth more than her share of inheritance, she shall not demand anything more;²² if it is less, she shall take something to make it up. **MAG 12.** One who is born from a free woman, after the writing of the will, shall inherit with his brothers and shall be considered as one of them. **MAK 54.** And those who are born from a sinful marriage, like a union with a brother's wife, a wife's sister, a father's sister, a mother's sister, or a father's wife or concubine, shall not inherit anything from their fathers except by a written will. Those who inherit from the father are the

19. A better way of putting it would be: "on what the children inherit from their father"

20. "... [Be they] close relatives or not." Alternative interpretations: "regardless of whether they are poor or people of wealth," "regardless of whether they are of the same father and mother or not," POEFNM 465-3.

21. Or, according to POEFNM 466-1: "Christians must agree that if a daughter's outfit is worth more than"

22. Or, አይገኝምቶብሉ, "she shall not be required to give back the excess [of her share]," POEFNM 466-1.

children born from a lawful wife. This is permitted. MAK 58. And if the father leaves anything to the children [born from an unlawful union] in his will, and wishes to make them inherit together with their brothers in equal measure, he is allowed to do so.

Second degree, the succession of the male and the female children of male children to [the estate of] their grandparents.

TS 30; MAG 12. The children's children, both male and female, shall inherit from their grandparents, and must object to the parents of their grandparents [succeeding the latter].²³

GLOSS: TS 39. If a grandparent who has a [living] son dies, and if, besides him, there are children of another, [predeceased] son, the children of his [dead] son shall succeed to that portion which would have gone to their father and shall take what their father would have taken if he were alive, regardless whether they are males or females and regardless whether they are under guardianship or not. This is a law which is not observed in our Church, as what is said in the source is better than what is said in this Gloss, in that his children are closer to him than the children of his children, and the estate should go to the one who is closer.

Section V. The succession of a father to his children:

This is the third degree, because a father comes before the [deceased's] brothers; this precedence is due to the fact that he is closer [than the others]. Between father and children there is only one degree, whereas between brother and brother there are two degrees, that is, two generations. Moreover, the father is the cause of the existence of both the child and the property. He is the source of the existence of persons who are entitled to [inherit his] property,²⁴ while the brother is not the cause of the existence of his brother.

The father, who is the origin of the property, is entitled to take it. And also the main part must go²⁵ to the father because he is the one who has given this property to his son; it is right that it come back to him. For this reason also, it is right to give preference to the father rather than to the mother; also, because woman has been created for man, and what is created for [the benefit of] another is inferior to the latter in honor; and because the mother is considered as the recipient, as the earth with respect to the seed. The more so, as the wealth returns to the brother, who is the successor to the paternal line, and this is the reason for the priority of the father over the brothers and the mother. MAK; MAG 12. If one dies and has no children or children's children, and has not left a will, but is survived by his father and mother, only his father shall succeed him.

Section VI.

It comprises four degrees: the succession as between full brothers and sisters; the succession of those who are not full brothers; the disposition regarding the

23. They shall have priority over the parents of their grandparents. If "fathers" is made the subject of the sentence (reading $\lambda\sigma\omega$: instead of $\lambda\sigma\omega$:), it may also run "... and the fathers shall call their children to their succession, and not their grandparents, POEFNM 466-2.
24. Arabic text: "The existence of the wealth depends on the existence of one who possesses it" (3/409).
25. Or, "And also the most logical opinion is that it should go to the father ..." (text/409).

the [deceased's] brothers shall be barred [from inheriting her share],³¹ because the canon provides that she must be treated on the same footing as one of the brothers. The brother shall forbid his children [to claim the share allotted to his sister also], because she is closer to the grandparent.³² MAK 88. The mother, with the father's brothers and the children of the father's brothers — all three shall share equally.³³

Seventh degree.

The rule [which provides that priority should be given] to the one who is the [deceased's] father's closest relative is appropriate. It is known that the child's child succeeds after the child, and that the child of the father's brother must be called to the succession after the father's brother.³⁴

The males and females born to the children of the [deceased's] brothers shall inherit equal shares after the [deceased's] brothers and sisters, as is established for the brothers. The priority of full brothers, born from the same father and mother, over those who are not full brothers, and the priority of the brothers on the father's side over those on the mother's side, is clear [from what has been said]; the [rule] that shows that the brother's children [inherit] after them is laid down.

GLOSS: TS 30. If the deceased had a brother from the same father and mother, and if this brother has left children, these children shall inherit with the brothers of their father, that is, with the full brothers of the deceased, and shall have the portion of their father and take what their father would have taken [if he were] living; they shall have priority over the brothers who are not from the same father and mother. This rule is not observed,³⁵ because the brothers are closer [to a brother] than their children, and the closer relative has priority over the more distant.

Section VII.

In this section there are two degrees, the eighth and the ninth. It is on what the paternal grandfather and grandmother of the deceased inherit.

The reason for giving priority to the [paternal] grandparents over the father's brothers is by the fact that the former are closer, because between the grandfather and his son's children there are two generations, while between the father's brother and his brother's children³⁶ there are three generations; as has been demonstrated in the chapter on marriage from the Abtelis with regard to the paternal grandparents and

31. The sister shall be given priority over the brother's children (text/411).
32. That is, her brother's children's grandparent, who is her parent.
33. They shall share the goods among three groups: the mother; the paternal uncles; the paternal cousins. The Arabic text reads: two thirds shall be divided among the mother, the paternal uncles and their children; the remaining third goes to the latter two (1/412). Since paternal uncles are extensively discussed *infra* as belonging to the tenth or eleventh degree, this sentence seems misplaced. Perhaps "father" here should be taken to refer to the deceased, and "mother" to his wife. In this case, "fathers" are the deceased's brothers. The relationship between these "degrees" and those discussed earlier, text following note 9, is not at all clear.
34. To make sense in the pattern being expounded, the reference should be taken to refer to the deceased's brother's children — nephews and nieces — rather than to deceased's father's brother's children — paternal cousins. The "father" referred to is the *child's* father, that is, the deceased's brother. Compare n. 36 *infra*.
35. Arabic text: "... in the Coptic Church" (4/412).
36. "His brother's children" are the children of the deceased's father, and therefore include the deceased.

the maternal grandparents,³⁷ the father's relatives have priority over the mother's relatives. TS 30. If there are no heirs in the descendant line, the ascendants precede the collateral relatives on either side, unless these [relatives] are the deceased's brothers. MAK 88. After the males, the females related to the [deceased's] father shall be called to the succession,³⁸ and after them the relatives of the mother. The aforesaid distinction, found in the two written canons, [states that] the estate goes to the paternal grandfather of the deceased after his brothers and [provides for] the precedence of the paternal grandfather over the maternal grandfather.³⁹

Section VIII.

It has two degrees, the tenth and the eleventh. On the succession of the brothers of the deceased's father and of the children of the father's brothers, and the provisions concerning them together with their mother.

The reason for priority of the [deceased's] father's brothers and of their children over the [deceased's father's] sisters and the sister's children is that the latter cross over from the family of the father to that of the woman, that is, to their [respective] mothers. MAK 19. One who has left no children, parents, [grandparents], brothers, brother's child, or wife, shall have for his heirs his father's brothers; and if he has no father's brothers, he shall have the children of the father's brothers for his heirs. MAK 28. The father's brothers and the children of the father's brothers, with the deceased's mother, all three shall share [the inheritance];⁴⁰ a third part [shall go to the uncles and cousins] and the mother shall have two thirds, if there are no brothers or brother's children, because the inheritance goes to the surviving person from each side of the relationship. TS 30. In each degree, the closest [relatives shall inherit], and if [several] heirs are found in only one degree,⁴¹ they shall inherit equally.

Section IX.

It has two degrees, the twelfth and the thirteenth. How the deceased's daughter's children and his sister's children inherit.

MAK 15. If there are neither brothers, brother's children, father's brothers, nor children of the father's brothers, the daughter's children shall inherit from the deceased. And if his daughters have no children, the sister's children shall inherit from him.

Section X.

The remaining degrees are found in this section.

MAK 11. If the deceased has left no child, parents, brothers, brother's child, or sister's child, the sisters of his father shall succeed him; but if there are no father's sisters, their children shall succeed him and this is the first degree, wherein the male and female children of a man are treated equally, while in the second degree

37. Arabic text: "... they are given priority over the maternal grandfather and grandmother" (1/413).

38. Arabic text: "... next to the male and female relatives on the paternal side, those on the maternal side shall be called to the succession" (2/413).

39. Arabic text: "Because of the aforesaid reason and these two general canons, the order of priority of the paternal grandparents of the deceased comes next to that of his brothers, and the grandfather has priority over the grandmother" (3/413).

40. This seems the correct placement of the text at n. 33, *supra*, which see.

41. Arabic text: "... if they belong to the same degree" (1/414).

and the following degrees, women and their children are not entitled to inherit⁴² with their brothers nor with the children of their brothers. MAK 88. Women more removed than the first degree are barred from succeeding, and the children of the females shall not inherit with the children of the males, nor the sisters' children with the brothers' children, nor the children of the father's sisters with the children of the father's brothers, nor the children of the mother's sisters with the children of the mother's brothers. But where the male line of the father runs out, the descendants born from the females shall be called to the succession.

And where there are no more relatives born from the females [of the paternal side], then the family of the mother shall be called to the succession. And as it has been said in the provisions of the law, after the father's sisters, the family of the mother, that is, the father of the mother of the deceased, and after him, her mother, shall be called to the succession; and after her the brother of the mother, because between the deceased and his grandfather there are two generations, while between him and the mother's brother there are three generations. And after the mother's brother, the children of the mother's brother, male and female, [shall be called to succeed] as in the case of the children of the father's brother, [who succeed] after the father's brother; after the children of the mother's brothers, the sister of the deceased's mother, and after her, her children, males and females, and after them the parents of the grandparents shall be called to the succession, and so it goes in accordance with what has been said already. MAG 12. As for one who has no heirs, the goods he leaves shall go to the public treasury.

Section XI. On the succession of bishops and monks:

RSTG 39. The property belonging to the bishop shall be distinctly identified, and the property which belongs to the church shall be kept separate, so that the bishop may have power over all his property, use it as he wishes, and bequeath it to the person he likes, and lest he lose his property because of the property of the church. And if the bishop has relatives or children, this behavior is held to be just before God; that is, that nothing of the church's property should be lost, and that he shall not give the property of the church to the use of someone he likes. No one shall use violence against the bishop because of his property. The people of his house and his relatives shall not quarrel [with the priests and deacons] on account of his property and the goods of the church, lest the dispute bring about shame, dishonor, stain, and a bad name after his death. TAS 31. [The bishop's property shall be kept separate,] lest his relatives fall into difficulty and curse him.

TAS 24. Whatever the bishop owns before his elevation to the episcopacy he may give it to any one he likes; he may dispose of it, and dispose of it by will, but whatever he acquired after he was appointed bishop must belong to the church. He is not allowed to dispose of any part of it, but [may dispose] of what he inherits from his parents, his brothers, or his father's brothers. BAS 40. If a person was poor at the time he was made a bishop, and acquired wealth after his appointment, it is obvious that what he has acquired belongs to the church; after his death it shall belong to the church. However, his children shall not be deprived of what may be given to them from the goods of the church [as alms] by reasoning that they are not entitled to the goods of the church [as inheritance.] Especially if the bishop has poor relatives, the necessities of life shall be given them from the goods of the church.

42. Gloss: "an equal share."

Section XIII. Those who may not inherit and those from whom one may not inherit anything:

Those who may not inherit without a will are those who are not related to the deceased by a natural relationship or marriage, even if they are related by agreement or by law, such as the relationship of governess, wetnurse, friends⁴⁶ or god-parent; or [relationship] by marriage, such as the mother's husband or the father's wives, the husband's relatives, the wife's relatives, the son's [half] brothers and [half] sisters, the brother's and sister's parents, the brother's wife, the sister's husband, the son's wives and the daughters' husbands.

Regarding those from whom one may not inherit, there are two parts.

Part I. One [who falls under the first classification] shall not inherit even when the will is made in his favor. TS. An apostate shall not inherit from a Christian even if the latter made a will in his favor and the former defected from the faith after the will was made but before taking what was bequeathed to him. If it is known that he came back to the true faith, he shall receive his share of the estate. If he embraces another faith after the partition of the estate, he shall not inherit anything, even if he was called to succeed by the will.⁴⁷

GLOSS: If the testator is a priest, his heirs must be Christians; if among his relatives there is no Christian, his estate shall go to the church in which he served as a priest. If he was not a priest and has no heirs, but was a Christian, his property shall be brought to the royal treasury. And the killer of the bequeather [shall not inherit] whether he himself killed him or delivered him to another person who did kill him. And he who schemes against the life of the bequeather with poison or similar things [shall not succeed him].

Part II. Of those who cannot inherit without a will by the one who leaves an estate:

These are the children and the relatives born from an unlawful wife, just as was said earlier with respect to slaves, freed slaves and dissolute children, who despise and insult [the bequeather] or dishonor him by abandoning his mode of life for some evil way of life, like that of a juggler or sorcerer. And those who fornicate with the wife of the bequeather or with his daughter, or with his sister, or with his mother, and those who bring charges against him to make him lose his wealth, all of these shall not succeed him without his written will. And a woman who gets married before the expiration of the days fixed by the law⁴⁸ or one who hides the will, pursuant to what is said in the chapter on marriage, all these must be barred by the testator from what they would be eligible to inherit according to their degree.

TS 33. The dissolute son who beats his parents, insults them continuously, falsely accuses them,⁴⁹ distresses them by his faults, does not obey them, causes them trouble which leads them to people who are not believers, accuses them to make each one of them debtors, or, where his parents are afflicted with chronic illness and have become old and feeble, does not care to help them as best as he

46. 9Ch: the bride-groom's best man.

47. Arabic text: "If he comes back to the faith after the partition of the estate, he shall not take possession of the part that might have been allotted to him, had he been a Christian at the time of allotment" (6:418).

48. That is, the days a widow must let pass before she remarries.

49. Arabic text: "... who denounces them for offences that are not aimed against the kingdom" (3:419). Or, "... accuses them fraudulently to put them in chains," POEFNM 477-2.

can[—this son shall be disinherited]. And if one of them is in prison or in trouble and the son refuses to act as guarantor when requested to by one of his parents, despite the fact that he is their male child; or if he uses violence to obstruct the parents from making their will; or if he associates with dissolute people against the advice of his parents and persists in this type of behavior; then his father shall not be called his father⁵⁰ nor shall he be his son under these circumstances. By the same token, the daughter, sister, mother and other persons shall be disinherited if they associate with fornicators; or, if one of the parents wishes to get a husband for his daughter or for the daughter of his son, and gives them the wedding outfit he can afford to give, but they refuse [to get married] and wish to lead a dissolute life.

And if one of the parents becomes demented, and all the children, or some of them, do not take care of him; or if he has no children and seeks help from those who are not⁵¹ his relatives but succeed him [even if he dies] intestate, and they do not take care of him; and later on he separates himself happily from his sickness, he has the power after this,⁵² at any time he wishes, to write a will by which he disinherits those children and relatives who neglected him in the time of his trouble as a punishment for their rejection of his wealth.⁵³ If a non-relative sees him being neglected by his relatives during his sickness, pities him, and wants to take care of him, he shall tell them to keep him and to take care of him. If they do not answer him, and the non-relative takes him to his house, and it is known that he paid for the [sick man's] maintenance with his own money, until the day of the latter's death, he shall get a share of the estate as one of those entitled to succeed the deceased.⁵⁴

Similarly, if one of the parents is exiled or imprisoned, and all the children or some of them do not hurry to free him to the extent they can, he must, once he is freed, confirm their disinheritance when he makes his will; he shall not appoint them as heirs if, because of their negligence, they did not rescue him from prison. And if he dies in prison, they shall not succeed him, because they were careless. His estate shall be given to the church, and shall be used for the rescue of prisoners, until they are freed by it. The estate shall be used carefully for rescuing others. If the prisoner has no children, and if those who would share his estate in the absence of a will are indolent, and do not hasten to free him—so much so that he dies in prison—his estate shall be given to none of those who neglected him before his imprisonment, even if he had made a will in their favor. This applies equally to the non-relative whom the prisoner had appointed as his heir before his imprisonment, if he, aware of the fact that he was his heir, did not bother to release him from prison. And if he is over eighteen years of age, this punishment is well deserved. [With regard to] whatever was sold from his property or was acquired upon pledge or borrowed to secure his release, to do this is a good and valid thing:⁵⁵ the one who comes back from captivity must pay and return it, because it was done for his release and benefit.

If the heir gave to the testator medicine that injured his intelligence, or if the testator was killed or taken prisoner as a result of the heir's failure to give him

50. Gloss: "he shall not succeed his father."

51. The negative Λ in $\Lambda\Lambda\text{h}^{\text{h}}$ must be deleted; otherwise what follows it is not coherent. The POEFNM 478-1 reads: h^{h} . The Arabic too, says: "[from one who is] his relative" (2/420).

52. After he recovers from his illness.

53. Arabic text: "... as a punishment for their negligence" (4/420).

54. Gloss: "The law says: 'He shall not inherit all the property.'"

55. More precisely, if one person sells something from the estate of the testator, or if he borrows or takes money on pledge to secure the testator's release, he does a good and valid work.

help while he could give it and was asked to, the heir, after these [facts], shall not inherit anything; nor shall he take what was assigned to him in the testator's will. But if he is an heir who could not give him help, because he is dumb, deaf, sick or demented, he shall not be prevented [from having] his inheritance.

Whatever has been said to be applicable to children with respect to their parents applies to parents with respect to their children. But there is a provision [applicable] to both the testator and the heirs, of whatever degree the latter may be, [that forbids disinheritance] if there is no reason to disinherit relatives or non-relatives after the will is made.⁵⁶ One who is not an heir at law shall not have priority over an heir at law. The other [provision] deals with fornicators, and is found in the Abtelisat; other provisions similar to the above are added to them.⁵⁷

The following are [cases] which must be ruled by analogy; there are no specific provisions dealing with them. These cases are divided into two parts: first, if two or three heirs die on a journey or were buried by a house that fell down upon them, or if they are wrecked at sea or were burnt by fire, or if some of them die because of one of these causes or because of some other cause, and especially if it is not known who died first and who died next, no one [of them], shall succeed any of them.⁵⁸ No one shall succeed them, except those from among the living who have the right to succeed them and not the dead, as it is not known which of them died first and which died next.⁵⁹

The second part forbids taking possession of the property of people who are not known to be alive, such as people who are in prison or on a journey, since their condition, [that is, whether they are alive or dead,] is doubtful. In particular, the property of persons about whom there is no news shall not be divided without producing reliable evidence to prove their death; if a long time has passed since they set out on a journey, the judge shall decide that one who has been absent for such a long period of time cannot be alive. If a person's relative dies at home [while the person is absent, the relative's estate] shall be divided in the person's absence [and his share shall be put aside]. He loses his share only when [it is certain that] he is not still alive, [because] people [ordinarily die] before this age.⁶⁰ For instance, if a person who is on a journey has a son, and a nephew of the former dies while his son is at home, the latter may not inherit his cousin's property while his father is alive, but must preserve the father's share until reliable news is received [about his father], until a decision based on sure knowledge is given on this matter, or the like.

56. Arabic text: "In short, this principle applies to all heirs and testators, when a cause for disinheritance occurred prior to the making of a will, regardless whether the will is made in favor of relatives or non-relatives" (2/422).
57. Arabic text: "This heading deals with one to whom something less than what he is entitled to is left; some of the fornicators already mentioned and similar cases are referred to this by analogy" (3/422).
58. Arabic text: "The family of one of them shall not inherit what belongs to the other" (5/422).
59. The passage must be constructed as in the above to make any sense out of the Ge'ez text. The Arabic version also reads: "If two or more persons, each of whom would succeed the other, die, and it is not known who died first and who died next, the family of either of them may not claim the estate of the other by alleging that he died first and that his entire estate passed to the other. Rather the estate shall go to the heirs at law and neither of the deceased shall inherit anything on the assumption that one survived the other" (1/423).
60. The meaning of this passage is unclear because it is an inaccurate translation of the Arabic counterpart, which reads: "If one's relative who is in the country dies while the former is absent, one shall proceed with great care as regards the share of the absent one, in that one shall suppose that the absent one is still alive, and shall not give his share to another who has lesser right to inherit while the absent one is still of this life" (2/423).

CHAPTER XLIII

THE JUDGE AND WHAT CONCERNS HIM AND WITNESSES¹

This chapter is made up of thirteen sections [taken] from what was written in the laws which are considered as roots and branches² and from the collection of appendices arrived at through perfect reasoning.³

Section I. The appointment of a judge:

The judge is the highest priest, that is, the patriarch or the bishop and those among the priests ranking next to them and worthy of being appointed judges in their stead.⁴ The appointment of a judge is required by the law and by nature. With respect to the first, the Highest God has said in Book 5 of the Pentateuch: "In all your cities which the Lord your God will give you, you shall appoint judges, so that they may deliver just judgments; and they shall not yield to either party at the time of judgment, nor shall they make distinction between person and person, nor accept bribes, because bribes blind the eyes of the wise, so much so that they cannot see the justice, and alter the just word."⁵ Nature requires the appointment of judges, because a community cannot live without there arising disputes caused by various matters. These disputes cannot be settled without a judge to arbitrate between the litigants, the strong and the weak, the intelligent and the fool, to see to it that justice is done. [The Holy Book] shows [that in case] one defies the order of the judge, he must be brought [before him], and the provisions dealing with this are laid down in the command of the law.⁶ The necessity of appointing judges is also apparent, since the provisions regarding the appointment of judges are dealt with in the canons providing for the appointment of priests and archpriests.⁷

It is essential now to lay down here the provisions regarding the office of a judge, and those which render his appointment fair and his decisions valid. These provisions are thirteen in number.

First, he must be a man. This implies that he has attained virility, by which is meant that he is no longer a youth, because if he has not attained this age he

1. That is, witnesses produced by the litigants or the judges who assist the king during lawsuits heard in his presence, and who may testify about them, POEFNM 481-1.
2. ሥርወ: "root," connotes the Old Testament and ለጽጌ: "branch," the New Testament; or, "root" connotes the Holy Scriptures and "branch" the Apostolic Canons, the Canons of the councils and the writings of the Saintly Fathers, POEFNM 481-1.
3. ትሩፋት: the "appendices or supplements" arrived at through perfect reasoning, probably refers to the glosses and the analogies deduced from what is laid down as basic law (1/425).
4. Gloss in NLM: በግብረችን ተቀመጥ በነገራችን ቀረጥ: "sit on our chair and give decisions on our questions [in our stead]."
5. Deut. 16, 18, 19.
6. According to POEFNM 482-1, መሢ፣ ጸነ፣ ለጽጌ ለሰው ረታሐ: rendered as "one who defies the order of the judge," should be taken to mean that one who refuses to present himself before the judge must be brought by force (ለጽጌን በከት፣ ይዞ፣ ከጻፍ፣ መደረሰ፣ ለገደገባ ፣) ; or, if one refuses to accept the decision of a judge, he must be compelled by a higher judge to submit to the decision, and all this is laid down in the Fetha Nagast.
7. Arabic text: "What will be said later about the judge shows the necessity of appointing him. As for the conditions for appointment, the conditions in the canons regarding the appointment of priests and archpriests have already been dealt with. Now let us ..." (1/426).

is not mature mentally and is not fit to be appointed to adjudicate between the young and the old and those like them. It is not good that such people come before a youth and that he rule for them and against them. "For them" means those who are winners [in the suit]; "against them" means the losers. The requirement of being a male is based on the consideration that man is the master of woman, as said by the Apostle.⁸ The office of a judge belongs to the superior rather than to the subordinate; because a man is more intelligent, he must judge. As asserted by the canons, a woman shall not teach nor shall she be made a member of the clergy; and no person other than a member of the clergy shall be appointed a judge.

The second [condition] is intelligence, together with knowledge. One form of knowledge is innate and the other is acquired [by studies]. [To be a judge] it is not enough to search [for knowledge] nor is it enough to be devoted to the [study of doctrine] and strive to acquire what is necessary [to carry out the duties of a judge]. He must also be one who is gifted enough to discern and distinguish [between the questions] intelligently, far from blindness, and subtle enough to solve difficult and obscure cases, since such a judge may judge between the wise and the wicked. He must not be less intelligent [than the litigants], or one who has scanty knowledge.

Thirdly, he must be an orthodox Christian and a priest conversant [with his duties].

The fourth condition is that he have the fairness required from judges and witnesses. As regards the first, he must be loyal, wise, irreproachable without blemish, slow [both] to pardon and to [follow the impulse of] his will, patient in anger, fearful of God, upright in his faith during the time he holds the office of judge;⁹ for he who has faith, uprightness and purity may judge over the illiterate and women, and rule on cases involving the property of orphans and those under tutelage. An impartial, mild and patient judge shall not be despised, nor shall his judgments be looked upon with contempt, since by doing these things they may provoke him to anger.¹⁰ With respect to [the fairness required of] witnesses, the section devoted to them deals with them.

The fifth [condition] is that a judge must be a free man, because he who has no power over himself has no power over others.

The sixth [condition] is that he must have sound hearing and sight, so that he may distinguish between the true and the false word.

The seventh [condition] is that he must be able to speak clearly, and must know the difficult languages which are spoken by the people of his jurisdiction when they argue before him.¹¹

The eighth [condition] is that he be free of any illness, such as leprosy, which would keep away many people who have [to come] to him, since witnesses must be able

8. Eph. 5, 23.

9. በግብርና ጊዜ: "in his time," is interpreted as በግብርና ጊዜ: "during the time he holds the office," POEFNM 483-3.

10. Arabic text: "... gravity and mildness, so that he may not be despised, nor his judgments considered of no importance. And also because [if he has no patience] the condemned might use language designed to make him angry" (1/428).

11. Arabic text: "... that the judge must know the prevalent language of the people who are under his jurisdiction so that he and the people may converse with each other fluently" (4/428).

to come to and stay before his court and others must come to be adjudged by him.

The ninth [condition] is that he must know the law and the rules of procedure in the roots and in the branches. The roots are four: i) He must know the word of the Divine Books, read and interpret them according to their exact meaning, with a knowledge that includes understanding of what is contained in the interpretation regarding the rules of judging, in their textual reading and in their original interpretation.¹² ii) He must know the contents of the accepted books, wherein the teachings and deeds of the Apostles are found, and also the teachings of the holy councils and the Saintly Fathers, so that he may follow their teachings and imitate their deeds, since all this knowledge leads to sound judgments. iii) He must know on what questions the collections of canons and the saintly and learned Fathers agreed, and on what matters they differed, so that he may follow what is certain and strive to think for himself on the disputed questions, and thus confirm what is more certain and closer to questions on which the Fathers agreed. iv) He must be able to draw analogies, by which one may obtain the ability of connecting the branches—which are required and which silence [any objection]—to the roots from which they sprouted.¹³ And the assembly of the Fathers was held to interpret [the roots and the branches] and to facilitate the process of arriving at the proper decision of questions that arise, each in its own way. He who is served in these four fundamentals can be considered as one of the able judges, who discharges his duties with insight and intelligence, and is entitled to interpret the book and to pass judgments.

The tenth [condition] is that the superior judge who appoints another must learn whether the one he appoints meets these requirements,¹⁴ either by becoming familiar with his life story, or by choosing him from among others, or by inquiring about him and asking those who know him.

Eleventh [condition]: The person who is appointed by a written document authorizing him to take up the duties of a judge and to exercise them permanently is duly appointed. This authorization shall be made public by announcing it to the people.

The twelfth [condition] is that once he has received the document authorizing [his appointment, he must spread] his teaching by his words and by his ruling as well as by his example.¹⁵

The thirteenth [condition] is that all those who are under his jurisdiction, or the greater part of them, shall not be prevented from coming to him; nor shall those in his jurisdiction, nor the majority of them, oppose his appointment.¹⁶

Section II. On his powers:

If his jurisdiction is general, he may rule on seven different matters. These are, first, to settle disputes and put an end to quarrels, either peacefully and amicably

12. The interpretation given by the Fathers.
13. Arabic text: "The ability to draw analogies which enable one to connect the necessary corollaries with the sources which are explicitly set out, and the interpretation of which gives rise to no controversies" (4:429).
14. Arabic text: "...that the one who appoints him to the office of judge know that he meets these requirements" (1:430).
15. Following (text 1:430) and POEFNM 485-3. The sense in the Arabic text is that the person appointed must accept his appointment to the office of judge, and manifest his acceptance either in word or by beginning to carry out the functions of a judge (4:430).
16. Arabic text: "Those who are under his jurisdiction shall not refuse..." (5:430).

upon [the parties'] agreement, or by force, striking fear into them. Second, [he may] give back property to its owner when his title of property has been proved by the confession of the accused or by the testimony of witnesses. Third, [he may] appoint a guardian for one who is incapable of administering his property, either because he is a minor, because he is deprived of the use of reason, or because he is a prodigal, so that his property may be looked after properly and to assure a sound judgment [by the judge].¹⁷ Fourth, [he must] know the time for the accounting of a charitable legacy, in order to watch over the root and distinguish the branches,¹⁸ to take what is yielded from it and use it for the appointed purposes. If the beneficiary of the legacy is worthy of administering it, he himself shall keep it; otherwise the judge shall appoint [another]. Then he will be informed as to the deposit under the care of the administrators, and, also, as to the affairs of orphans, and of those under guardianship. Fifth, [he may] execute a will according to the wish of the testator and the provisions of law on it, without causing any obstruction. If someone was appointed by will to administer the succession, he shall be the custodian [of the inheritance]; otherwise, the judge shall appoint another. Sixth, [he may] appoint a deputy who is fit to be a judge, if he [himself] is kept too busy attending to many matters. The deputy may not delegate his power to someone without the authorization of the judge. After the death of the judge who is fit for the office of judge, the deputy judge has no power to appoint another if the former held an important position; only the one vested with authority¹⁹ may appoint his replacement. Seventh, [he must] know the witnesses well. [He must know] that those who testify as witnesses are pure²⁰ [and also must know] those who are trusted, the good ones among his subordinates and his chosen deputy, in order to keep them [with him] continuously and with confidence, and to replace them if they display laziness or incompetence.

If he was appointed over a specific matter, to the exclusion of other matters, his jurisdiction is limited to that matter. Such is one, for instance, who is appointed over matters regarding marriage of women and not matters pertaining to property, or one who is appointed over a certain locality to the exclusion of its neighbor, or over a certain group of people to the exclusion of others because he knows the language and character of one group and not those of the others. He must not exceed his power; rather [he shall limit himself] to the administration [entrusted to him].²¹

Section III. Provisions regarding the judge:²²

Our Lord has said in the Holy Gospel: "Judge not with partiality, but judge righteous judgment."²³ DESQ 6. The judge must be fair and must abide by the Lord's will. 7. And behold what is written in the Psalm: "Judge justly, son of men."²⁴ 10. And the Lord has also said: "Thou shalt not be partial towards the

17. Guidi says, "and for an exact knowledge of the judgment," and interprets this as implying careful supervision by the judge of the administration of the ward's substance (text, 4/431). POEFNM 486-1 renders it as: "... and he must appoint a deputy judge in order to understand the judgment concerning it."
18. According to the gloss, "root" indicates the legacy, and "branches" stand for the "legatees."
19. Or, according to the gloss, one who is of a higher rank.
20. That is, exempt from falsity, POEFNM 486-3.
21. Arabic text: "He cannot exceed his power, except in his capacity as a vicar" (4/432).
22. Or: "What the Holy Books and the Sainly Doctors command of the judge," POEFNM 487-2.
23. Jn 7, 24.
24. Ps. 57, 7.

rich in judgment, nor shalt thou favor a poor man,"²⁵ since in judgment there is no mercy. You must know the judgment for each sin, so that you may not do injustice upon anyone, and so that the anger of God may not arise upon you for the unjust judgment delivered from you. Remember that He will ask you [for an account of your deeds]. And be careful not to imitate the elder priests who were witnesses against Susanna in Babylon²⁶ and condemned her to death unjustly, lest you receive the same punishment by the judges.²⁷ God saved Susanna from the hands of transgressors of the law through the prophet Daniel and killed the elder priests, throwing them into the fire because they sinned against her. God knows the judgments you deliver; you cannot hide yourself from Him. If your judgment is right, you will be rewarded for your uprightness in this world and in the one to come. But if your judgments be unjust, you will suffer many evils.

And you must know that accepting bribes leads to fear of others, and then you will be like them.²⁸ Do not accept any present when you appoint someone [to be a judge], except from one who has no power,²⁹ like your son or your parents.

A judge must pass to his replacement the power he had; his replacement must command his subordinates and administrators to fear God and to be eager in searching for the property [of those who have suffered robbery].³⁰ He must order his assistants to be merciful in settling disputes. No market, business, trading partnership, or similar enterprise shall be set up before his court,³¹ neither for his benefit nor for the benefit of the deputy [judge] appointed by him. He shall not receive the litigants individually, in the absence of their adversaries, nor must he see them individually after they are separated.³²

Section IV. On how he discharges his functions:

He must first show the document authorizing his appointment. It shall be read [to the public] in the court where he carries out his duties, so that his appointment may be known. The cases of those who are in prison and those who are excommunicated shall be reported to him. He shall set free the one who, in his opinion, must be set free, and shall keep [in prison] those who, in his judgment, must not be released and those who, on the strength of their own confessions or witnesses' testimony, must not be set free. If someone says: "I have suffered an injustice," and his creditor is not present to renew the lawsuit, the judge shall write the latter a letter so that he may appear [in court] for the lawsuit, if he lives nearby. If he does not appear promptly, the judge shall release the debtor once the latter produces a guarantor of debt. From the one who is evidently poor, the judge shall accept the guaranty of debt and set him free, so as to give him the opportunity of finding the means to pay his debt. He shall order his subordinates not to introduce before him one adversary in the absence of the other: [he

25. Lev. 19, 15.

26. Dan. 13, ff.

27. The gloss says እያንዳንዳቸው : "[lest you deserve punishment] rather than absolution."

28. That is, like the elders who condemned Susanna.

29. Gloss: "except when he has no power to judge." The Arabic text says that the judge may receive gifts from those over whom he cannot judge, as is the case between a father and his son (5/433).

30. Following POEFNM 488-3. Arabic text: "he shall recommend...the fear of God and due care in applying the law, so that justice may be done" (2/434).

31. Near the tribunal. The Arabic text reads: "It is desirable that ..." (3/434).

32. That is, after the litigants leave the court, he shall not call one of them back and stay with him, POEFNM 488-3.

also shall order them] not to give the debtor precedence over the creditor, or the one who came later [precedence] over the one who arrived first.

He must be calm, not proud. He must not judge while under the influence of something which agitates his mind, such as anger or fears which perturb him, grief or joy which make him forgetful, hunger and thirst which affect him adversely, sickness and evil which cause him pain, sleep and drowsiness which overcome him, or laziness and weakness which hurt him. [He must not judge while] he is drunk or light-headed³³ or while he is disgusted and annoyed because of the strain of overwork. He must not hide himself, except when he is resting or doing some other necessary thing. And when the litigants come before him, he shall begin with the one who arrived first; in none of the hearings shall he give precedence to the one who came last.³⁴

If there are some among the litigants who are tired from travelling or who have fallen sick, the judge must treat the litigants equally³⁵ in bringing them before him, in making them sit, in receiving [their complaints], in hearing them, in talking to them, and in judging them, be it for or against. He shall not talk in a whisper to one³⁶ nor give the other occasion [to suspect him]. He shall not quarrel with any litigant, nor shall he favor one person,³⁷ be he strong or weak, humble or important; the important one must not get the impression that the judge is afraid of him, and the poor and the humble must not lose hope of seeing justice done. Once the litigants have argued [before him], he shall not delay giving his decision without a justifiable cause.

He shall not judge [in cases involving] himself, or if the case involves his parents, grandparents, sons, grandsons, brothers or his wife; but he shall judge [in cases involving] others. He may judge when litigants [including members of his family] agree to be ruled by him, but preferably he must refuse. But these people must bring their case before his deputy, and the judge must not testify for them. [Also] he must not give a decision either for or against his enemy.³⁸ neither shall he be a witness against him, because judicial decisions are public while testimony is [given in] secret.³⁹

If a new case, similar to another he had ruled upon previously, comes before him, he must rule in a manner that demonstrates careful study of the new case, even if the sentence conflicts with the previous one. But he shall not invalidate his own decision, nor the decision of another [judge], unless the decision contradicts

33. Arabic text: "[in a state of] inebriation, even if it be ever so slight" (2/435).
34. According to POEFNM 490-1, the judge shall first hear the accuser (the first) and in no case shall he give precedence to the accused (the last to come). The Arabic text says that one who arrived first shall present one case only, notwithstanding that he has more than one case (3/435).
35. Guidi understands this to mean that the judge shall hear the two litigants simultaneously, though one of them is tired, sick etc. (4/435).
36. Arabic text: "He shall not suggest arguments ..." (1/436).
37. Arabic text: "...he shall not help him out in his arguments" (2/436).
38. Not for, because his enemy may think that the judge uttered the judgment in his favor under the pressure of fear; and not against, because the judgment may be affected by the enmity, POEFNM 491-1.
39. That is, if he delivers a sentence against his enemy, the sentence has the sense of what is uttered publicly and an appeal may be taken to another judge, but if he testifies against him, it is not possible to know whether his testimony is true or false, because that is a secret hidden within his conscience, POEFNM 491-1.

the word of the law⁴⁰ — unless it does not conform to the word of the law, its interpretation, the provisions of the canons which the Fathers were assembled [to write] with knowledge acquired [by God's help], or what seems [correct] in his opinion. And note that it is preferable to return to a right decision than to leave a wrong decision uncorrected.⁴¹ The judge shall decide on [the basis of] what is made clear in the court by a reliable word, when his understanding is made certain by the one who confesses⁴² or by what is manifested by witnesses, if there are witnesses, or by an oath, if there is an oath. Never shall he give a decision on a case without inquiring into it further, if he is ignorant of the facts.

Section V. On oath:

Apostle Paul has said: EB 4. "And the oath which a man takes is to swear by one greater than himself; every controversy which happens between men is ended by an oath. And because of this, especially, the Lord wanted to show to the heirs of the promise that His promise does not pass and He confirmed it by an oath. And since there is nothing greater than Himself, by which He might swear, He swore by Himself and said in blessing, "I shall bless thee and I shall multiply thee."⁴³ Though Our Lord said in the Gospel: "You shall not swear at all,"⁴⁴ He did not say [do not swear] in lawsuits, because all He said with respect to the proper way of speaking is: "Let your speech be: 'Yes, yes,' or 'No, no,'" and added: "And that which is added over and above this comes of evil."⁴⁵ The extra talk is unnecessary, while taking an oath during a lawsuit is essential. But it is proper that a man avoid taking an oath if he can, either by paying his money or without paying anything,⁴⁶ for the glory of God and for the hope of what is near Him. Explaining this word, St. John Chrysostom has said: "If you say 'What is this oath⁴⁷ which everyone of us expects from the other and gives to his companion when he demands it?' I say that it must be given with the fear of God. And he who follows the precepts of the Christian faith does not demand an oath,⁴⁸ as he is feared by others and God helps him."⁴⁹

BAS 2. Do not swear in the name of God for trifles;⁵⁰ especially, do not swear falsely. God has commanded us not to swear in a manner other than that laid down in the Holy Books. But if we cannot avoid taking an oath, we shall swear, to make up for the deficiency in men's knowledge. [In this case] we shall

40. Arabic text: "His judgment shall not be invalidated unless it is apparently contrary to the contents of the law" (4/436).
41. Arabic text: "To return ... is better than being obstinate" (2/437).
42. Guidi says that by this ተለግኒ: "he who confesses," the assistant of the judge is meant (3/437); POEFNM 491-2 says "the one who speaks and says, 'Yes.'"
43. Heb. 6, 16, 13-14.
44. Mt. 5, 34.
45. Mt. 5, 37.
46. By settlement of a just debt, reconciliation, or arbitration, POEFNM 492-2.
47. More precisely: "How must it be given?"
48. He does not require others to take an oath nor does he take any.
49. "Feared" stands for "respected," because he does not resort to oath easily and God helps him. An alternative interpretation runs: "He who behaves according to the precepts of the Gospel shall not resort to an oath, because if he does so, he will be feared by people and be called መሐላ ተለግኒ: 'one who lives on oath.'" The subsequent phrase is modified to read: "and God will not help him," POEFNM 492-3. But the former is more reliable because it corresponds to the Arabic text, which reads that the one who does not compel others to take an oath is respected by people and helped by God (4/438).
50. Gloss: "without a judge, without an accuser."

swear with the fear of God, lest we be judged with a terrifying oath. And if one of the clergy swears falsely in the name of God he shall be expelled for three years. MAK 55, 127. If two persons enter a contract for a business or for a partnership or make a pact, and draw up a document confirming their oaths⁵¹ not to go back upon their word, and then one of them fails to observe what was written, the judge shall punish him for taking a false oath and shall compel him to observe what was written. If one who is ordered to take an oath has sworn by putting his hand on the Gospel, and his lie is then discovered, he shall be punished.⁵²

§. Know that in the previous Law of the Old Testament, the divine law demands [the doing of] good deeds through making justice known; and then in the later Law of the New Testament it demands that one persevere in doing good and hidden deeds.⁵³ The ancient Law forbade swearing falsely and provided for the punishment of one who swore falsely; but in the new Law, an oath, according to the law of reason, should not be uttered, pursuant to what our Lord said in the Gospel: "It was said to yours of old: 'You shall not forswear yourselves,' but I say to you not to swear at all."⁵⁴

An oath, be it out of necessity or without [necessity], is taken with knowledge or on the basis of one's opinion. The first [oath, taken out of necessity and with knowledge,] is permitted. The second oath [is uncertain because] it occurs in words tending toward mistake or forgetfulness, [and this is] because of a bad habit, such as to falling [into error] in other things, with knowledge or lack of knowledge, or, especially, [because one acts] involuntarily without reflecting. [In any of these cases,] the one who swore must repent, regardless whether he swore truly or falsely.⁵⁵ As to the first [oath], if it is in reference to the past, the oath must run: "I swear on God that I did not do ..., " or "I did ..., " or "You have nothing of yours with me," or "You owe me" If the oath is with reference to the future it must run: "God knows I shall not do ..., " or "I shall do"

The oath concerning the past is divided into three. First, if it is given with sure knowledge, whereby the thought tallies with the spoken word, in this case the matter may be settled peacefully, [avoiding swearing] if it is possible. If it is not possible, the fault is upon the one who makes the other swear [although the latter is not a debtor], if he is aware of his injustice. But if the mind of the one who swears is uncertain whether he owes something or not, and he wants⁵⁶ to swear [notwithstanding that], he must return to the truth and ask God for forgiveness.⁵⁷ But if his oath is in accordance with the truth, he commits no sin at all unless his conscience is uncertain. Second, if he swore to something while

51. Arabic text: "... vouched for by an oath" (2/439).

52. Gloss: "let his tongue be cut off."

53. The Arabic text says that the Ancient Law wishes to render external deeds upright by justice, and the New Law wishes to make internal deeds upright by perfection (5/439).

54. Mt. 5, 33-34.

55. The Arabic text says that the oath, be it necessary or not, is pronounced with premeditation and concentration on what is being said or without any such premeditation or concentration. The latter is given in words affected by error, forgetfulness, or it occurs because of a bad tendency of swearing, just as other acts are done with fickleness and not with deliberate intention. For this type of oath one must do penance, regardless of the fact that he swore to the truth or to something false. As for the former, given with due care, it refers either to the past or to the future (1/440).

56. $\lambda\lambda\omega\zeta$: "to know" stands for $\omega\epsilon\lambda\lambda\epsilon$: "to want, to wish" (3/440).

57. Arabic text: "If the knowledge of one who swears is in accordance with the truth, that is, if he believes in what has taken place, it is all right; but if he swears to what his conscience believes but later notices that it is not so, he must return to the truth" (1/441).

aware that he was lying, this means that the spoken word contradicts the thought. One must abstain from this because the word of God in the Mosaic Law says: "Thou shalt not swear falsely in the name of God thy Creator."⁵⁸ And if one swears falsely by the temptation of the devil, he must return to the truth and thus to penance. Third, if an oath involves a mistake,⁵⁹ it must be avoided by [reaching] a peaceful settlement in the best way possible, as said earlier. If this cannot be done, the one who compels the other to swear is to be blamed so long as he knows his injustice or is doubtful.

There is no doubt that an oath on something which is to take place in the future must be fulfilled, provided that the oath concerns good things and does not lead to the commission of a sin; but if it entails a sin, one must draw back from it. One must not keep an oath regarding something that will occur in the future, if it is about a prohibited thing, but one must honor it if it is about a lawful thing. He who swears to a prohibited thing must do penance, lest he add sin by action to the sin he [committed] by the spoken word.

Know that the proper way of taking an oath is to swear in the name of God, and that there is no difference between these two [names, that is,] between the name of God and the name of Christ, since both names belong to God. The name of Christ is the name of God Who became man. And he who wishes to say something to impress and frighten others using some of His names mentioned in the Divine Books may do so. One may say, for instance "God, great, strong, powerful, One Who knows hidden as well as apparent things, One Who rewards everyone according to one's deeds, One Who does not forgive one who swears in His name falsely." One may not swear by something other than God, His attributes or something belonging to Him. Among the things that belong to Him are: His Gospel, His Cross, His Altar and His Saints. A person who has lost his reason or has not attained majority shall not be made to take an oath.⁶⁰

GLOSS: This raises a question: Swearing in the name of God is equivalent to swearing in the name of Christ, but it is not true in the reverse, because the name of God—may He be praised!—encompasses the Father, the Son and the Holy Ghost, while the name of Christ refers to the Son only.

Section VI. The tribunal, those who go there, and those who do not:

DESQ 10. Priests and deacons shall be with you, O bishops, in the court of judgment, and as men of God you shall judge without partiality and with justice. Remember that Christ, the Son of God, is present among you in court to observe your judgments and to hear you speak. And God has said in the Law: "Neither shalt thou join the multitude to do evil, nor shalt thou accept worthless talk nor sit in the gathering of those who despise justice."⁶¹

§. A pure and clean seat, where cold and heat will not touch them and which does not smell, shall be prepared for the judges. They shall not sit in the church or in the sanctuary to administer justice, because only priests are allowed to enter the sanctuary. No quarrels or cries must take place in the tribunal. Experienced persons must sit with the judge, and the assistant judges must be present, so that

58. Ex. 20, 7.

59. Arabic text: "doubt" (3/441).

60. The gloss indicates that one must be 7 or 18 years old to take an oath.

61. Ex. 23, 2.

when difficult questions arise the judge may consult them on those questions. And if he is not certain what sentence to deliver, he shall postpone the case until he becomes certain.

Section VII. The time and manner of judgment:

MAK 50. Judges shall not deliver any decision on Sundays, and the creditor, the judge, the soldiers and the tax collector shall not frighten the people on that day. **DESQ.** You shall assemble to settle judicial matters on Monday; if there is a lawsuit you shall settle it and be reconciled⁶² during this week by Saturday, so that the lawsuit may be settled and you will already have reconciled the litigants by the holy day of Sunday.

And as provided by the law, when the litigants come to you, both shall stand before you at the center of the court. After you hear what they say, you shall judge between them with justice and uprightness. You shall not judge solely on the basis of what one of them says before his adversary appears, but when both litigants are present you shall judge between them with justice. The Lord has said: "Look for justice and judge according to it, when you sit down to judge and the litigants argue before you face to face, you shall not call them brothers until they are reconciled, and you shall release them from their debts only if they deserve it." And we have already said that it is not right that you decide against one before both appear together, because if you give your decision in haste, on the basis of what only one of them said when the other party was not present to defend himself, you will deserve the sentence you passed; you will be an accomplice in the lie and suffer its consequences before the Almighty.

MAK 29. A man cannot be represented by his slave in bringing a lawsuit before the judge, since a slave is not equal in honor to a free man.

§ 1. Know that it is the accuser who must produce witnesses to prove something, and the accused who must take the oath. If they agree to let the accuser take an oath,⁶³ it may be done, and then the debt is binding on the one who denied it. [Ordinarily], the accuser is the one who asks [for payment, and therefore should produce witnesses, while] the accused is the one who is asked [to pay, and therefore takes an oath].⁶⁴ An accusation brought by someone who is not the owner of the object which is the cause of the accusation is of no effect; similarly, the accused must have in his possession the object for which he is accused.

When both parties come before the judge, he shall say to them: "Speak out"; he shall keep silent until they speak. And if both appear as accusers, the one who brought the charge first shall have priority, and when he has finished with his charge, the charge brought by the other shall be heard. If one insults the other or says shameful words, the judge shall cut him short; if he does this again, the judge shall reproach him, and if he persists in this, the judge shall excommunicate him. And if the judge cannot understand the charge brought by one of them he shall say to him: "Make the charge you brought clear." He shall not give his decision until the accuser describes the object and indicates its quality and quantity in unequivocal language, for instance by saying "I gave him fifty Egyptian dinars"; the words "Egyptian dinars" describe the quality, "fifty" the quantity.

62. Arabic text: "...you shall ... be free of your work" (1/444).

63. "If the accused says [that the accuser is] to take an oath and eat ..." POEFNM 499-1.

64. Following the interpretation of POEFNM 499-1.

If the accuser brings a clear charge, which is understandable, the judge shall say to the other: "What say you?" If the accused admits the charge the judge shall say to the accuser, "Here, he admits [he is your debtor]"; if the accuser claims his property, the judge shall decide in his favor and against the debtor. But if the accused denies the charge, the judge shall say to the accuser, "Have you witnesses?" If the accuser says "No," he shall say in his turn to the accused "Will you swear?" If the accused is afraid to swear and turns back the oath to his accuser, and if then the accuser takes the oath, the object shall be restored to him. But if the accused, after he shows his fear of taking the oath, says: "I swear," one shall not hear him except with the consent of the other. But if he then goes to another court and does not refuse to take the oath, he shall not be prevented from taking the oath.⁶⁵

If the accuser says: "I have reliable witnesses," and demands an oath from his adversary, the latter shall not be obliged to swear before the accuser produces the witnesses. And if the accuser says: "I have reliable witnesses," and one of the witnesses testifies, after having refused, he must be heard.⁶⁶ If the witnesses produced by the accuser are not enough, the judge shall require him to produce some more witnesses, in order to be more certain. If they are upright and have the fear [of God],⁶⁷ he must keep them separate and interrogate them one at a time about the truthfulness of their testimony and the place, as Daniel did with the two elders who testified against Susanna. If their testimony is identical,⁶⁸ he shall warn each of them separately, by frightening them and striking terror in them, about the passing things, about those things which do not pass, about the time of life,⁶⁹ thus reminding them of the divine punishments that have befallen those who were false witnesses since antiquity. He shall tell them that from the spiritual point of view,⁷⁰ it is better to come back to the righteous way than to dare to do vain things, since to repent is better than doing vain things, while to persist in doing them is to commit sins upon sins. If, after this, they persevere in being witnesses and the fear [of God] is in them,⁷¹ the judge shall say to the accused: "Here, A and B have testified against you; you have accepted their testifying, but I give you permission to rebut their testimony."⁷² [The judge says this] in order to judge between them, by ascertaining the reliability of the witnesses. If in a [subsequent] examination, all the witnesses testify in contradiction [to their previous testimony], or if only one of them persists [in his previous testimony], the previous testimony

65. If it involves a new cause of action, his oath is valid; it is not valid with respect to the former cause, POEFNM 500-1 and (1/446).
66. In POEFNM 500-2 interpretation the passage reads: "If the accuser says: 'I have reliable witnesses,' and if the accused then admits his debt, after having denied it, the latter shall go unpunished." The Arabic text says that if the accuser, after losing the case, contends that he can introduce another witness, this witness shall be heard (3/446).
67. A mistranslation of the Arabic text, which reads: "If their testimony is identical and the judge suspects something" (4/446).
68. At this point the gloss reads: fih 4-7 : "with malice"; what follows is thereby rendered coherent.
69. That God might cut their life short, POEFNM 500-3.
70. Arabic text: "... explaining that from the rational point of view to come back to the truth is better than to persist in falsehood, since abandoning falsehood amounts to doing penance" (3/447).
71. Arabic text "... and if the suspicion the judge entertains towards them persists" (3/447).
72. POEFNM 501-1 says: "It is said, embrace your friend and reject your enemy; I give you...."

condemning the accused shall be disregarded, since only one of the witnesses persists.⁷³

§ 2. If the accused keeps silent, neither admitting nor denying the charge, the judge, to get an answer from him, shall say to him again: "Answer! Otherwise you must take an oath, or produce a guarantor for the object you are accused [of having]." If the accused says: "I have witnesses [to say] that I have nothing of what he accuses me [of having]," he shall be given time to bring the evidence, and the accuser shall not disturb him until he produces the witnesses. If he delays past the time [given] to produce the witnesses, he must either take an oath or confess;⁷⁴ if there is much talk among the witnesses,⁷⁵ one shall judge on the basis of the predominant testimony.⁷⁶ If the word of one of them has no more weight [than that of the other], one shall decide in their presence as he would have decided if they were not produced.⁷⁷ The word of the one who is in possession of the object, supported by his oath, shall be accepted if his adversary does not produce witnesses who testify that the other has committed perjury.

If some one dares to accuse a woman who is inexperienced in litigation and does not travel for buying and trading, the woman shall not be compelled to come [to the court]; she shall give an order appointing someone to represent her. If she has to take an oath, the judge shall send a righteous man to her to take her oath.

The judge shall write a special and separate book about his judgments [for submission] to another [superior] judge. This book shall bear the testimony of two or more witnesses who testified in favor of the judge's decision.⁷⁸ And this [superior] judge shall examine the correctness of the judge's decisions. If he has accepted the witnesses' testimony, he shall decide on the basis of those decisions.⁷⁹

The conclusion⁸⁰ of Section VII concerns some matters which are dealt with in their respective chapters, such as charitable legacies, manumission, deposit, free loan, sale and purchase, lease, succession, wills and similar things.

73. The Arabic text says that if the judge still has any doubts as to the truthfulness of the witnesses, he may say to the accused that though he has accepted their testimony, he authorizes him to produce evidence to rebut it, and if the accused weakens their testimony with other evidence to such an extent that only one witness sticks to his story, in this case the first evidence is void (6/447).
74. Arabic text: "He must swear that he is not indebted; otherwise, the debt shall be charged to his account" (1/448).
75. Gloss: "if they disagree."
76. For instance, if among three witnesses, two of them agree and the third one disagrees, the judge shall decide on the basis of the testimony given by the two, POEFNM 501-2. See, however, the Arabic text in the following footnote.
77. According to the POEFNM 501-2, this is understood to mean that if there are four witnesses in a suit, and from among them two testify for and two testify against, one shall consider the case as if there were no witnesses; consequently, since witnesses are required in any suit, other witnesses must be added. The Arabic text says that if two pieces of testimonial evidence contradict each other, one shall judge on the basis of what is more probable; if they are of equal weight, both shall be disregarded (3/448).
78. Witnesses who attest the verity of the testimony and the decisions contained in the book (1/449); see also POEFNM 501-1.
79. Arabic text: "... he shall confirm it" (2/449).
80. ~~§ 2~~: "conclusion," is wrongly inserted here (3/449). Arabic text: "Section VIII. On Judgments: Each chapter [of the nomocanon] contains the proper judgments on" *Ibid.* This, therefore, should be Section VIII, the following should be Section IX, and so on. Accordingly, Section XII on witnesses should be Section XIII, consistently with the introductory note of this chapter. But in omitting Section VIII, the translator divided the section on witnesses in two, in order to make thirteen sections.

Section VIII. On peaceful settlements:

A peaceful settlement is commanded by the word of Our Lord in the Gospel: "Go first and reconcile thyself to thy brother; then coming back thou shalt offer thy gift."⁸¹ And also His saying: "Blessed are the peace makers, for they shall be called the children of God."⁸² The Apostles have also said that the servants of Christ must not be the enemies of each other. EFESON 3. "The one of you should support the other; be careful to keep spiritual love in the bond of peace. 4. Let not the sun go down upon your anger; give not way to the devil for seducing you."⁸³ DESQ 69. Try to make peace between those who quarrel before the judgment of the bishop is delivered.

Litigation achieves no good in this world, for the trouble which one causes to another due to anything of this world is a deed of the devil and of his temptation. And a man should hasten to defeat this temptation, even if he loses some of his belongings. It is better that you lose something of yours and be eager to be all men's brothers; and not only with your brothers but with all people, because if you lose [something] in this world you shall not lose [anything] of God, since you are a minister of God, one who lives according to the precepts of Christ. You shall bring those who quarrel to mutual love, because Our Lord has said: "Blessed are the peace makers, for they shall be called the children of God."⁸⁴ 12. But those who create enmity, war, and quarrels, and those who bring lawsuits are unjust, and strangers to God, since the Lord is a God of mercy. QORONTOS 6. "Now you already have condemned your body, when you became enemies and when you quarreled one with another. And why do you not rather suffer wrong, and why do you not rather suffer injustice? But you do wrong and defraud your brothers. Do you not know that the unjust shall not inherit the Kingdom of God?"⁸⁵ Know that a peaceful settlement regarding a determinate object may be made by compensating and giving something to avoid [the necessity of taking] an oath, thus ending enmity and the lawsuit, for the sake of God's will and out of regard for men.

Peaceful settlement is divided into three: namely, peace by admission, peace by denial, and peace by keeping silent, which occurs when one does not admit or deny the accusation.⁸⁶ If [a claim] for an object is to be settled by giving [the claimant] another object, [the dispute] is settled when an object is given for [the claimed]

81. Mt. 5, 24.

82. Mt. 5, 9.

83. Eph. 4, 2-3, 26-27.

84. Mt. 5, 9.

85. Cor. 6, 7 ff.

86. Instances of how these three forms of peaceful settlement may occur are given by the POEFNM 503-3. In all three forms, the presence of arbitrators is required. The first form, settlement by admission, may occur when the debtor admits his debt but, in his turn, claims a pledge he gave to the creditor, who does not want to return it. Then the arbitrators settle the question by inviting the debtor to pay the debt and the creditor to give back the pledge. The second, settlement by denial, may occur when the creditor accuses, claiming his credit, and the accused denies. The arbitrators ask the debtor, who admits the debt but in turn accuses the creditor of having wronged him. The arbitrators settle the matter by inviting the debtor to pay the debt and the creditor to give due satisfaction for the wrong he did to the debtor. The third occurs when the debtor keeps silent, neither admitting the debt nor denying it. Asked by the arbitrators, he admits the debt but declares that he is unable to pay it, as he is short of means for paying. Then the arbitrators settle the question by deciding that the creditor shall not ask to be paid immediately, and that the debtor shall pay at a future, determined time.

object; this shall be done as people do in selling and purchasing.⁸⁷ If the settlement concerns an object that [was hired to] yield profit, it shall be in accordance with the [contract of] hire they made. Every [kind of settlement] is allowed, provided that there is no usury in it; as, for instance, when the settlement is made upon an amount of twenty in ready [money] or thirty at a future time, or [when] instead of a measure of old grain [due now], newly [harvested] grain is to be given in the future, this is certainly allowed.⁸⁸

A settlement shall be void if the terms agreed upon are not observed — for instance, if the settlement was to be made upon payment within a fixed time, and the debtor did not pay within that time; or if it was to be made on condition that the debtor give the creditor a part of some object, and the former refused to give back even that much. A settlement [to be made] of a debt [by paying something] other than the kind of [object] owed, before the time [for payment of the debt], is tantamount to selling the debt; a settlement [to be made] of a debt [by paying] another object equivalent to the [object] owed at the proper time extinguishes the debt.⁸⁹

Section IX. [Section providing] that Christians shall not bring suit at the court of infidels; that judges shall be appointed from among archpriests or priests; that no one shall judge in [a case involving] himself; and that no one shall refuse to appear before the judge when a lawsuit is brought against him:

Apostle Paul has said: QORONTOS 6. "If there is someone who has a quarrel with his companion, they shall accuse each other before the saints—not before the slanderous and unjust, but before the saints and the pure. Do you not know that the pure shall judge this world? And if the world shall be judged by you, are you not worthy to judge this small judgment? Do you not know that we shall judge the angels? And how much more that which is in this world? But if between you and another man of this world there is a quarrel, set among you those who are in the least degree in the church to judge between you. And I have said this to your shame. So then, is there not among you a wise man, not even one, who is able to judge between brothers, so much that the brother becomes the enemy to the brother or goes to sue him before those who are unbelievers?"⁹⁰

DESQ 8. A Christian shall not go to a pagan magistrate, nor to a magistrate of heretics, to be judged by him in any matter, because the devil prepares many traps for some of the servants of God through their companions. It is shameful for them that they do not have even one wise man among them capable [of judging] among them—one who knows the judgment each deserves and saves the one from the other in order to remove quarrels. And so do not let the pagans know anything of the disputes that occur among you.

BAS 92. Any case that involves priests shall be brought for judging not before a lay judge, but before the bishop and the archpriests. Lay judges cannot sit in judgment over the Church; rather it is the Church that sits in judgment on every man.

87. "... In that the purchaser gives the money to the seller and the seller gives the object to the purchaser," POEFNM 504-1.

88. Arabic text: "A peaceful settlement shall not take place on conditions which are usurious, as, for example, if one binds himself to give, after a period of time, thirty [items] to discharge a debt of twenty [items]" (3/451).

89. Arabic text: "A transaction regarding a debt before the time falls due is equivalent to the sale of the debt; and a transaction involving payment of a portion of a debt, in its kind and at the time fixed, is tantamount to forgoing the remainder" (5/451).

90. I Cor. 6, 7 ff.

MAG 11. If someone has a quarrel with another and does not go before a judge, but [rather] acts by his own will—as if he had authority!—using force to take what his debtor owes him, this man shall not be given anything. And if he takes what does not belong to him, he shall be brought before the judge in the place where he lives, so that he may be punished. If he does not appear before the magistrate to be judged but puts himself in the place of the judge who vindicates, taking his object without an order of the judge, he shall be deprived of what he took.⁹¹ TS 39. If someone takes anything from the hands of others without an order of the judge, and the thing was his own, he shall lose his ownership of it; if the thing belonged to the one from whom he took it, he shall return it together with the price it fetches, and something additional to this.⁹²

If someone is accused before a judge and refuses to go, and if trustworthy people testify against him, he shall be punished or excommunicated until he goes to the court for the lawsuit.

Section X. Provisions on the continuation of the judge [in his office]:

This [section] serves to [establish] the conditions limiting [the duration of] the judge's office, to [define] the acts of judging proper to his rank, to [clarify] what is found in the document authorizing his appointment, the writing of the precepts [given to him at his appointment], and the limit of his [competence in] judgment,⁹³ and to [set out] whatever is left from what has been said in this chapter. Know that whatever did not obstruct one from being appointed a judge cannot prevent him from continuing to occupy that office:⁹⁴ since he should be full of health when appointed, there must be a total deficiency of health found in him to dismiss him from his office. For instance, if he falls unconscious, one shall wait if there is hope that he will be cured; if there is no hope of his cure, but he falls unconscious only occasionally, they shall be patient with him; but not otherwise.

Section XI. On dismissal of a judge from his office:

A judge may not resign without the consent of the one who appointed him; the latter may not dismiss the former without manifest cause.⁹⁵ If a judge is dismissed or resigns himself, this must be made public, just as his appointment was, so that the lawsuits before him may be interrupted. As for a decision given by the judge after his dismissal, if it was given after he was notified of his dismissal, it is void; but if it was given before he learned of his dismissal, the decision is valid. The [deputy] judges [appointed by him] to administer justice under him shall not be dismissed until his replacement dismisses them for a manifest cause. And if after his dismissal he says: "I had decided thus [on such a matter]," it is not sufficient unless there are witnesses who testify together with him. But this [proceeding can happen only] if one of the litigants is not satisfied [with the decision], or if the judge was not promoted to a higher rank, like a priest who upon dismissal from the office of judge is promoted to the rank of bishop or patriarch.⁹⁶

91. Gloss: "he shall pay double."

92. Gloss: "court fees."

93. The above passage is very ambiguous in the Ge'ez text; the Arabic text says that the condition for staying in office is to continue to meet the requirements met to be appointed judge (7/453).

94. The Arabic text says that not all things that impede an election to the office of judge impede continuation in the office (1/454).

95. Gloss: "without [manifest] failing."

96. If a dismissed judge is accused of passing an unfair judgment during his office, he must have witnesses that he acted fairly; but if he is promoted to a higher position, he need not have witnesses that he acted fairly, because the fact of his promotion is enough to show that he was a fair judge.

Section XII. Of witnesses:

It is divided into ten parts:

First, on the necessity of appointing them:

This is demonstrated by the [Holy] Scriptures and by reason. In the [Holy] Scriptures, the Lord says: "Every question must be settled by the voice of two or three witnesses."⁹⁷ Also Paul has said: TET 5. "Do not accept any accusation against a priest unless there are two or three witnesses."⁹⁸ BAS 82. You, O bishop, do not judge anyone without witnesses. And what is said in other sections shows the necessity of appointing them, since [to be a man] composed of [the four] elements⁹⁹ is not sufficient [to be a witness]; but only the men who by their nature are wise and just [are worthy of being witnesses].¹⁰⁰ The reason is this: as some men are honest witnesses and others are dishonest, it is necessary to produce the honest ones as witnesses when a suit comes before the judge. Those whose word is reliable at the time of the proceeding must be produced, in order to know the truth and to discard vain talk.

And as reason tells us that it is essential to have witnesses and to gather [in the court] for matters [concerning lawsuits], it is necessary to produce witnesses during the proceedings — as provided by the Divine Laws and others — since the witnesses confirm the truth. To receive an oath, especially if there are no witnesses, may be sufficient.¹⁰¹

Second, conditions that must be met by the witnesses:

John Chrysostom has said in his explanation of the Gospel according to Matthew: this term "uprightness" is not enough,¹⁰² if this uprightness is observed in connection with one of the virtues only, namely justice. But it is enough in the case of one who is bestowed with every virtue, since the Evangelist¹⁰³ said: "They were both just in God's sight," and then said, more precisely, thereby praising them: "following all the commandments and the justice of God without reproach."¹⁰⁴ The Apostles in turn have said: DESQ 10. Those who bear witness must be pure before God, not irascible but trusted, saints, lovers of neighbors, and merciful — not wicked or avid, but peaceful and good. Such are the persons whose testimony is acceptable, because of their good conduct, their true word and their good deeds. The testimony of those whose behavior is other than this shall not be accepted, even if their words are the same.

97. Deut. 13, 15.

98. I Tim. 5, 19.

99. That is, earth, water, air and fire.

100. Gloss: "Those who by their nature are abnormal shall not be witnesses." The Arabic text says that the determinations and prescriptions on the qualifications of witnesses extracted from the Sacred Books show the necessity of appointing witnesses; the qualifications prescribed cannot be understood unless there are persons to whom they apply (4/455).

101. Gloss: "If there are no witnesses, it is necessary to take an oath." The Arabic version says that when witnesses are available few oaths are taken, and that this is more advantageous (2/456).

102. Following the gloss. The Arabic text says that though the term "uprightness" connotes a specific virtue, it is an all-embracing term that denotes the qualities of a virtuous man (3/456).

103. St. Luke.

104. Lk. 1, 6.

Fifth, on fixing the time [for giving testimony]; for making the report [of testimony].¹⁰⁹ and for producing witnesses:

TS 21. The [number of] days that a witness will take to travel the distance [to court] at a normal rate,¹¹⁰ the day [set] for giving evidence, and the day [set] for reporting [the testimony shall be communicated] to the one who desired to produce the witnesses, so that he may provide what they require for their food.¹¹¹

Sixth, on those whose testimony is not valid, be it for or against:

A man can not testify on his own behalf with his own words only, as Our Lord Jesus Christ—may He be praised!—said: “If I testify in my own behalf, that testimony of mine is worth nothing.”¹¹² And of being pure,¹¹³ He said: “You judge yourselves just, but God knows your hearts.”¹¹⁴

TS 27. No one shall testify for his kinsmen. It is obvious that a man must not testify for his son, the son of his son, his descendants, his father, his mother, his grandfather, his ascendants, his wife, his sister, his brother, his slave, his partner in matters concerning their partnership, or the one he has named in his will. [That is, he must not testify for them] unless the one against whom he testifies gives his consent, or unless he is equally related to the one for whom he testifies [and the other,] as in the case of two sons and two grandfathers.¹¹⁵ [In these cases,] their testimony is valid against those we have mentioned, [whether the witness is] one of the [above-named] persons or another.¹¹⁶ TS 27. Never shall one testify regarding the writing of a will if he is the heir at law, if his name is mentioned there as heir, or if he was appointed administrator of the estate by the testator. Nor is the testimony of a slave given in support of the master who manumitted him, nor for his former master's son, acceptable. DESQ 4; BAS 82. No man shall give testimony against his enemy or against his debtor,¹¹⁷ unless they had previously consented to his testimony either for or against them. TS 27. One who made peace between men¹¹⁸ shall not testify regarding that matter, regardless of the matter in question. If a man previously testified against another concerning some fault, the latter cannot testify against the former. He who incites a quarrel regarding any matter and then reconciles it cannot testify regarding it.¹¹⁹

Any person whose testimony is valid is competent to testify on his own behalf:

109. This “report,” قٲٲ is that made to a superior judge by an inferior judge who was sent to hear the witnesses in another place (1/459).
110. Gloss: “load.” That is, a normal rate is that achieved by a person carrying a burden, and not that achieved by one who runs (3/459).
111. In the POEFNM 511-1, it is pointed out that until the time of the Emperor Iyasu (probably Iyasu II, 1730-1755), maintenance of the witnesses was on the account of both the accuser and the accused, but from that time it was decided that the accuser was to maintain the witnesses and to be indemnified, should he win the case.
112. Jn. 5, 31.
113. Gloss: “they must not be proud, saying that they are pure.”
114. Lk. 16, 15.
115. If, for instance, the dispute is between two brothers, their father may testify. The Arabic text says: “... [the testimony is valid] if the one for whom testimony is given and the other against whom it is given are related to the witness equally” (6/459).
116. That is, whether he is father, son, partner, etc.
117. POEFNM 511-3 says: “... regarding his enemy or his debtor.”
118. Gloss: “without having been ordered by the judge to reconcile the two contending parties.”
119. Arabic text: “An arbitrator may not appear as a witness regarding the matter he arbitrated” (4/460).

his testimony offered for himself is valid.¹²⁰ RSTB 52. Never shall the testimony of heretics against a bishop be accepted; neither shall the testimony of only one bishop be accepted against him. TS 22. One who attested an invalid will¹²¹ may not testify until the testator renders it valid; the law does not compel him to testify.

Note that this shows that testimony is like a deposit entrusted to the witnesses, who give testimony to the benefit of the depositor. It is necessary that they give it to him when he demands it, so that it may be useful to him. One who does not give it to him deprives him of his wealth. And one shall not require remuneration for it,¹²² neither for having kept it with him nor for having it taken from him.

Seventh, on unreliable testimony:

The testimony given by persons who were passing by or the like is not valid in any respect. [Such a case is] when one says: "I was working near A and I heard [another person] say that he had taken from B such and such a thing." Since this testimony is not given from [direct] knowledge, it does not deserve to be accepted. MAG 20. Never shall testimony given under duress be valid until the witnesses are identified,¹²³ the matter inquired into, and the facts ascertained.

Eighth, on avoiding false testimony and on the debt owed by a false witness who persists in his [false] testimony, should his testimony be impeached by true testimony:¹²⁴

God has said: "Thou shalt not bear false witness."¹²⁵ TH 11; BAS 29. If someone bears witness against another, so that the latter will be deposed from his rank or punished, and it is later discovered that the witness testified falsely, he shall be condemned to a punishment the same as that to which the person against whom he testified falsely was condemned.

Ninth, on matters which bar a person from testifying, which are an abandonment of the proper precepts and an adherence to things which bar giving testimony:

TS 27. Never shall a person who was charged¹²⁶ with accepting money to bear false testimony be competent to testify. And it is necessary that a witness be

120. Gloss: "one who in public opinion is considered to be a saint." The above rendition conforms to this gloss and reflects also an alternative rendition found in POEFNM 512-1. A rendition strictly adhering to the textual terms could be: "Any person whose testimony is valid may testify against himself (በላዕሉነፍሱ) and his testimony [offered] against himself (በላዕሉ) is valid." In the POEFNM (*ibidem*) the passage is also rendered: "If there is a witness whose testimony must be accepted, his testimony is valid [standing] alone," that is, without the presence of two or three. The comment goes on: "This is the case if the witness is a bishop or the king." Arabic text: "A witness' testimony which would not be acceptable in favor of someone is acceptable if it is against him; a witness' testimony which would not be acceptable against a person is acceptable if it is for him" (5/460).

121. ስምላ፡ ወኪል፡ literally, means "one who was a witness." This is the testator who makes an invalid will, POEFNM 521-3 and (1/461). The Arabic text says that one who attested a will and is not willing to testify when requested to, may not be a witness (1/461).

122. Arabic text: "A witness is not entitled to any remuneration unless he is obliged to interrupt the work by which he makes his livelihood" (3/461).

123. Following POEFNM 513-1. ይገባውቱ፡ "be identified," may be corrected to read ይገባውቱ(ይወቱ)፡ "they know," so that the phrase runs: "only after they know and examine the matter..." (6/461).

124. Arabic text: "The prohibition against false testimony, and how a false witness is held liable for what may result from his testimony" (2/462).

125. Ex. 20, 16.

126. ዘላፍ፡ "one who was reproached," is equivalent to የሰሰው፡ "one who was accused of" (see the gloss).

mindful of that to which he testifies; if he withdraws from his testimony, it must be because of an obvious cause.¹²⁷

Tenth, on testimony regarding¹²⁸ other testimony:

One cannot be a witness regarding testimony given by another, except in the case where the first witness says to the second witness: "Be a witness to my testimony, which is as follows"; if the second has seen it, has borne witness before the judge regarding the testimony of the former, and has confirmed it, his testimony is valid;¹²⁹ even if the former objects, the second shall be a witness. Testimony regarding other testimony is also valid if the first witness is sick, in prison, on a journey, or dead. But if [these circumstances] are not present, if something which excludes the [second] witness from testifying happens—if he quarrels with the person against whom he is testifying, or, especially, if there is a cause which bars him from testifying in that particular matter—he is not a trustworthy witness. In the case of testimony regarding other testimony, if two or three witnesses give their testimony, they shall be counted in the number of witnesses.¹³⁰

Section XIII. Provisions regarding witnesses:

They are in eight parts.

First, on testimony regarding crimes:

DESQ 7. One must not believe the testimony given by every man, because there are many people who accuse their brother falsely, out of envy or malice, as did the two elders who bore witness against Susanna in Babylon. You, O bishop, must be careful in these matters, as a man of God; do not punish [someone] on the basis of the testimony of such persons. Do not ruin one who has not sinned; do not cause the death of one who is just.

Second, on the coming of the witnesses to testify:

TS 27. Those who bear witness to a document of debt or of loan must declare that they were present when the money was received by the borrower and that the admission of [that same] borrower [that he was a debtor] took place in their presence, as provided in the law; they must declare also that they were called solely to attest this matter. At the time of difficulty and of fraud,¹³¹ the witnesses must come in person, and not merely [send] the words of their testimony; one considers the testimony of those who are witnesses and not merely their presence,¹³² because the testimony of the man [given by himself] removes from him any suspicion [of falsehood].¹³³

127. Arabic text: "It must be clearly established whether a witness is qualified to be a witness or if he must be barred" (6/462). An alternative interpretation in POEFNM 513-3 says: "Persons with an interest in the testimony shall remind the witness of all the factual circumstances, and the latter shall be released after he has testified."

128. $\text{fl}\alpha\text{fl}$ "upon, in addition to," but the sense seems to be "regarding."

129. Arabic text: "This second witness is competent to testify, if the first witness said to him: 'Be a witness [to this and that],' or if the second witness saw the first testify in court" (1/463).

130. If in addition other witnesses are called because the first witnesses' testimony conflict, the new witnesses must be added to the former to make up the required number of witnesses (5/463).

131. That is, when the debtor denies the debt.

132. Only the evidence of those who were present as witnesses must be taken into consideration, and not of the others, notwithstanding their presence (6/464); but see the following note.

133. Arabic text: "It is necessary that in matters involving fault the witnesses themselves be present and not only their testimony, since one notices the witnesses and not the document written by them: the physical presence of the individual removes any suspicion from him" (7/464).

Third, on the disagreement of witnesses:

TS 27. When the testimony of the witnesses is in disagreement, or one witness quarrels with another, or their testimony is false, the judge must accept the testimony of those whose word is reliable, and flog the liars, if it is known that they are accustomed to doing evil. And if most of the witnesses say one thing, and there are some who differ from them, he shall not listen to the greater number, but to those who agree¹³⁴ — those who, among the witnesses, have no hate or love [towards the accused], and in whom the judge and those who are present with him have confidence; for one shall not believe witnesses merely because they are numerous, but rather because they are loyal and truthful.

The judge must examine each witness: whether he is honorable and without stain, or despicable and of bad reputation; whether he is wealthy or poor; whether he is one who may be suspected of some transgression for the sake of gain. The judge must also examine whether the witness is a friend of one of the suitors or an enemy of the other. If his behavior is free of any stain, then his testimony is reliable. And the judge must notice whether the witnesses [all] declare the same thing, whether they reply to what is asked of them in a satisfactory way, and the reason why [particular] testimony must not be accepted.

Fourth, about those who are chosen to testify and those who chose them:

TS 27. Those among the witnesses who have the knowledge of a child shall be examined to see if they are fit to bear witness when their testimony is required. And if the testimony of a foreigner is required, his testimony shall not be accepted unless he is carefully examined.¹³⁵ MAG 20. Do not consider to be pure the one who is not pure, for here is written a saying: Woe to him who discharges as pure the one who is wicked, by reason of accepting bribes, and who denies true judgment to the poor man, preventing him from getting what is due to him.

Fifth. TS 27. If someone [twice] produces witnesses from among his enemies, and at the second [hearing] they testify against him, he cannot free himself from this testimony and seek to show that they are his enemies or some other similar [disqualification],¹³⁶ unless in the interval between the two hearings an obvious enmity had arisen between him and them rendering the witnesses disqualified, or unless he produces clear testimony to show that their words are false.

Sixth. One who produces witnesses three times¹³⁷ and does not produce others must produce four other witnesses once the falsehood of the former [witnesses] has been proved to the judge, before [he may make] any statement.¹³⁸

Seventh. The accuser must prove by questioning his adversary that the object is his, that it was not taken justly, and that it belongs not to his adversary, but to others;¹³⁹ however, the property shall not change hands [until the decision of

134. Or, "to those who meet the requirements for giving testimony" (2/465).

135. Arabic text: "Witnesses who are strangers [to the place] shall be interrogated by the judge: if the case is such that any one of the common people could testify, none shall be heard without being questioned first" (7/465).

136. Arabic text: "If one produces witnesses in a certain case, he may not object to their testimony, if the same witnesses are produced against him in another case, under the pretext that they are cowardly" (1/466).

137. More precisely, "one who produces three witnesses ..." POEFNM 516-1.

138. Gloss: "before saying: 'The evidence is in my favor.'"

139. According to POEFNM 616-2: הַאֲלֵזֵם: "others," stands for the parents of the accuser.

the judge is given]. No one shall produce witnesses to prove that the object which is the cause of the charge against him belongs to him.¹⁴⁰

Eighth. on withdrawing testimony:

If the witnesses withdraw their testimony before the judge and during the proceeding, the proceeding is rendered void: but if they withdraw it after the proceeding [has ended, the judgment] shall not be annulled. Rather, all the witnesses shall share the debt equally; they shall be liable for the damage caused by their [false] testimony. And if one of them withdraws, he shall bear half the debt. If the witnesses are three or more, and more than two withdraw their testimony during the hearing, they shall not be liable for anything; nothing is lost from the property by their withdrawal, as they have withdrawn their testimony.¹⁴¹ If after the proceeding two or more witnesses withdraw their testimony and only one remains, those who withdraw shall bear as a debt half of the property, because that is the amount which they caused to perish.

140. Arabic text: "The person who brought the charge must prove that he is entitled to a thing: it is not enough to prove that his adversary is not entitled to it, since the mere fact that his adversary is not entitled to it does not necessarily mean that he is the owner" (1/467).

141. In this case the sentence is not passed due to the lack of the required number of witnesses, and no damage is caused to the accused.

CHAPTER XLIV

KINGS

It is in five sections.

Section I.

TH. The king you appoint must be one of your brethren. It is not proper for you to appoint over yourself an alien and an infidel, lest he multiply horses, women, gold and silver [to himself]. And when he sits on the throne of his kingdom, some priests shall write for him the Divine Book, so that he may keep it by his side and read it throughout his life, in order to learn the fear of God, his Creator, to observe His commandments, and to practice them, lest his heart become proud [and feel contempt] for his brethren. He must never swerve either to the right or to the left from what has been laid down in the Law, so that his days and his sons' days may be prolonged in his kingdom,¹ and his faith in God may be perfect. EB 9. Because of faith the walls of Jericho were pulled down, when the sons of Israel marched around them for seven days. Because of faith, Gedeon and Barak and Samson and Jephthae and David defeated the kings, served the cause of justice, found what they hoped for, were victors in war, and defeated the army of the enemy.² RSTA 54. And if the king becomes a heretic, from that moment he is no longer a king, but a rebel.

Section II.

Our Lord said in the Gospel: "Give to the king³ what is the king's and to God what is God's."⁴ And Apostle Paul said in his letter to the Romans: "Every one of you must be submissive to the authority of your ruler,⁵ since a ruler is appointed only by God. And God has appointed all these rulers and given them authority: one who opposes the ruler and rebels against him, rebels against the ordinance of God, his Creator. Those who rebel against the rulers secure their condemnation. Judges and rulers are not terrifying to those who do good, but to those who do wrong. If thou, O man, would be free from fear of rulers, do right and thou shalt win his approval, since he is God's minister and servant, calling thee to good and beautiful things. But if thou dost wrong, fear the ruler, and beware of him, since it is not for nothing that he puts on the sword. He is God's minister, and with anger he takes revenge on wrong-doers. Therefore, we must be submissive to him not only for fear of his anger, but also in our conscience. It is for this same reason that we give tribute since one who is appointed to keep [public] affairs orderly is God's minister and one who does His will. Give every man his due: tribute, if it be tribute; fear, if it be fear; honor, if it be honor; tithes, if it be tithes."⁶

St. John Chrysostom, in his explanation of this passage, has said: The Apostle had already shown [this] in his other letters, commanding the [lesser] chiefs to

1. Deut. 17, 15 ff.
2. Heb. 11, 30, 32 ff.
3. Gloss: "since he is entitled to collect tributes."
4. Mt. 22, 21.
5. POEFNM 518-1: "judge."
6. Rom. 13, 1 ff.

give due obedience to the higher chiefs,⁷ as the servant must obey the master. This the Apostle did, showing that Our Lord did not abrogate all the laws by His precepts, but confirmed them.⁸ And his saying: "Every soul" is because every man must conform himself⁹ to this; and his saying: "A ruler is appointed only by God," means that God has provided for the appointment of judges and rulers to take place, so that the world may become beautifully calm. And for that reason He has established the ruler, since equality of forces causes many wars. And God in His wisdom has established many kinds of authority, such as that of man in respect to woman,¹⁰ the father in respect to the son, the old in respect to the young, the master in respect to the slave, the teacher in respect to the disciple, and, more so, the chief in respect to the one who is placed under him. The Lord acted in the same manner with the body, [creating] the head and placing the other parts under it;¹¹ he also did thus with other animals, such as bees, *raza*,¹² ants, antelopes, eagles, buffaloes, and all kinds of fish — every one has its chief, and when there is no authority there is confusion and lack of order. And his words: "Since he is God's minister calling thee to good and beautiful things," mean that he will lead you daily in your obedience to God. His punishments will be directed against those who rebel against God, murderers, fornicators, thieves, and wrong-doers; but his favors go to the obedient, who obey the Highest — Whose name be praised! — to those who despise the world and to those who do works of perfection and are righteous.

For the spiritual and corporal benefits which we derive from the ruler, let us give him tribute and presents in payment for them. This tribute is meant to provide the judges with the necessities which they are in need of, since they put aside their own interest and care for the public welfare. Do not say that [A] has transgressed the law but consider the order obtained by the law.¹³ There is no peace if an authority is not constituted; instead, because of the lack of authority, there is great confusion and lack of peace, which leads to the loss of life and existence. Indeed, you must see the wisdom of the Legislator who arranged all things, being first in His Unity.¹⁴ And if you say that you are better than [your] ruler by faith and by works, know that this is not your time [to have a higher position than his].¹⁵ since now you are a pilgrim and feeble. Your time will come. It is not yet known that you are better than he, and this living place¹⁶ is not a place for compensation.

Section III.

MAK 37. Let the king give honor to the order of the clergy, as Constantine, elected, faithful, and righteous king, and those who were after him did. Let

7. That is, the chiefs and ministers obey the king as the young obey the elders (1/469). In POEFNM 518-2 ለግዳግ ገዳግ denotes the temporal chiefs while ለግዳግ ገዳግ stands for the spiritual chiefs; its reading is: "... the temporal chiefs to give due obedience to the spiritual chiefs."
8. That is, He did not abrogate the law of the Old Testament, but confirmed it by the law of the New Testament. In this context ለግዳግ ገዳግ: "behavior," means, ለግዳግ ገዳግ: "rules, laws," POEFNM 518-3.
9. Gloss: "must be subject."
10. Gloss: "that woman be subject to man."
11. From the gloss.
12. A type of bird which feeds on locusts.
13. This might be understood thus: "Never say that this or that chief has not maintained a correct private life, but consider the order and the peace he maintains."
14. Arabic text: "You see the wisdom of the Legislator, who has ordained the things since the beginning of creation" (2:471).
15. Following (text/471).
16. That is, the world.

him give from his wealth¹⁷ to each of them, according to their rank. First of all he shall give to the bishops, then to the priests, next, to the deacons, and then to those who are below them. He shall exempt them from tribute, presents, and the other things to be given to the rulers. Let him assign something to the churches for the maintenance of widows, orphans and the poor, so that they may entreat God to strengthen the true faith with belief in the Holy Trinity, so that the day of the Christians' king may be long. And let the king assign to God a part of the presents and of the spoils of war, as King David and other righteous kings did. Let him not raise his hand against priests or God's saints, so that what befell the evil kings of Israel and others may not befall him. TH. "When you have reached the land which God will give you, and have settled there, you shall set apart the first-fruits of the land, and carry them to the place that God has chosen, to the priest who has the office at that time. Give worship to the Lord thy God, and feast on all good things the Lord thy God has given to thee, thou, thy home, the priest and the stranger that is in thy home."¹⁸

Section IV.

The king shall judge with equity in the middle of his people. He shall not be partial, either toward himself or toward the others, toward his son, his relatives, his friends or the alien in any way which brings about injustice: And it is written in reference to kings: "The honored king loves justice, but the unjust king loves evil and injustice, to the ruin of his soul." And Solomon the wise has said: "To increase justice and save the oppressed is better than the offering and sacrifices."¹⁹

Do not take the wealth of anyone by violence; do not buy from him by force, either openly or by trick, in order not to be afflicted by God in this world and in the future. In this world, as befell the King Achab and his wife Jezabel, when Naboth refused to sell him his vineyard and Jezabel schemed to kill him and took the vineyard; God smote Achab and made his race perish; and next to him he smote Jezabel, and the dogs ate her in the aforesaid vineyard.²⁰ As for the future world, the Apostle said: "Wrong-doers and apostates shall not inherit God's Kingdom."²¹

Never shall the king wrong orphans and widows, since the Highest Lord has said: TB 14. "If you wrong them and they cry out to Me, their cry will be heard by Me, and I will answer them. My anger will blaze out against you. I will smite you with war: your wives will be widows and your children orphans."²²

The king shall rule his friends and soldiers with leniency and with clemency. He shall act according to the advice of the old and of the judges; neither shall he hear against them the advice of the young who have grown up with him, nor shall he make his governing heavy upon them, taking heed of what was done to Solomon's son by his father's friends.²³ He shall treat well the sons of the kings who ruled before him, as David did the descendant of Saul. He shall also treat well the ministers [of the preceding king]; he shall not ill-treat them. Let what happened to the King of Amman be a warning to the king, as God gave David victory over

17. Gloss: "Constantine never said, 'Come and see me,' but he used to give presents."

18. Deut. 26, 1 ff.

19. Prov. 21, 3.

20. III Kgs. 21.

21. I Cor. 6, 9.

22. Ex. 22, 23-24.

23. The rebellion against Rehoboam, I Kgs. 12.

him when he ill-treated his ministers. And if his father is still king, he shall be careful not to rebel against him, lest God smite him just as Absalom was defeated in war when he betrayed his father and attempted to take over the crown.

TH 13. "When thou goest out to war with thy host against thy enemies, keep thyself clean of all offence. Should anyone be not pure, he must leave the camp. He may enter again the next day, after he purifies himself, so that thy camp may be holy, so that no impurity may be found among thee, and so that [the presence of] God may not be withdrawn from thee."²⁴ 14, 24. "When thou goest out to war against thy enemy, and thou seest horses, chariots, and a people more numerous than thy own, never be made afraid by them. The Lord thy God is with thee. And when thou beginnest to fight, let the priest speak first; let him say to the people: 'Attend! You are going into battle against your enemies; do not let your heart be frightened; do not fear them, for God is with you, fighting your enemies; do not go back before their faces, because God, your Lord, goes before you; He will save you and will kill your enemy.'²⁵

GLOSS: There is a passage in the canons of the Kings where it is said: "When Christians go out to war against their enemies, they shall put before them the Cross of Christ. They shall give worship to it, and shall cry before God one hundred times, saying: 'Kyrie Eleison.' And then let the herald speak and say: 'None must come to the battle compelled against his will.'²⁶ When God gives you power over them, declare your faith before them, and when you find that their faith is the true faith, then they are your brethren. Otherwise, you will make them your slaves to give tribute and to serve you."

TH. "When you reach a city or country to fight against its inhabitants, offer them terms of peace. If they accept you and open [their gates], the men who are there shall become your subjects and shall give you tributes. But if they refuse the terms of peace and offer battle and fight against you, [go forward to] assault and oppress them, since the Lord your God will give them to you."²⁷ But if they seek refuge among you, you shall have mercy on them, since the Lord has said: "Blessed are the merciful, they shall obtain mercy."²⁸ And it is necessary to thank God, the Giver, because He has had mercy on His servants. The disciples of Christ, when they said to Our Lord: "Wouldst Thou bid fire come down and consume them, as Elias did?" Our Lord held them back by saying, "Do you not know of what spirit you are?"²⁹ For by mercy and by charity towards men, man imitates his Creator and the Christian is distinguished from others.

GLOSS: TH. "And if thou surround the city and thou hast been a long time besieging it to fight until the gates open, do not cut its trees, since the trees of the field cannot flee before you, but cut trees which do not yield fruit and fight against the inhabitants of the city till you conquer them."³⁰
TH 14. And when you pass through the city of your brethren, do not harm

24. Deut. 23, 9 ff.

25. Deut. 20, 1 ff.

26. Gloss: "One who has not had his salary at the time of the battle and one who is not a veteran warrior."

27. Deut. 20, 10 ff.

28. Mt. 5, 7.

29. Lk. 9, 54-55.

30. Deut. 20, 19-20.

them; pay them with money for the food and the water you need, so that the Lord may bless you.

MAG 15. If someone redeems a prisoner for a certain price from the one who took him, and the prisoner has some property, he shall give his redeemer the price for which he rescued him; he shall redeem himself and be free. If he has no wealth, he shall remain in the hands of the one who redeemed him and work as a mercenary until he pays the price [for his release] from his wages, after an agreement on this has been made before the people. **TH 13.** "If a fugitive takes refuge with you, you shall not give him back to his master, but let him remain where he wishes among you, in one of your cities, and do not oppress him."³¹

TS 40. From the spoils of war, a sixth part shall be taken for the [royal] private treasury; the remaining part shall be distributed equally among the judges and rulers. If there is one who has a greater share than another, [the latter] shall be given from the part still undivided. The custodian left to guard the army's camp shall take his share in proportion to that taken by the others. **33.** And if someone gives information treacherously, to bring harm upon the kingdom so that the enemy may win — if he reveals your plans to them, flees to them, or has sold them weapons — let him be hanged and burned.

Section V.

If God delivers you into the hands of your enemies because of your sins and they take you to their country as prisoners, you must stand firm in your faith. You must be faithful to your law in food and drink, and to all the dispositions of the Law, as were Daniel and the three youths, so that the Lord may save you from the lions and the fire, so that His name may be praised for your exemplary obedience, and so that He may bring you back to your country as [He did] those mentioned earlier.

31. Deut. 23, 15-16.

CHAPTER XLV

MISCELLANEOUS MATTERS TAKEN FROM THE OLD AND NEW TESTAMENTS WHICH MUST BE MENTIONED IN THIS BOOK, OTHER THAN THOSE MENTIONED IN THE RESPECTIVE CHAPTERS.

Since man was created with both a soul and a body, it was necessary that two Laws be laid down for him. The first serves to render perfect his external acts, those acts which are performed by the external parts of his body. The second Law serves to make perfect his internal acts, those acts which are [done] by his conscience, his internal faculties and his intelligence.

The first Law is found in the provisions of the Ancient Law, which is the law of justice known as the Pentateuch. In it, visible temporal laws are laid down. They deal with temporal deeds for which a sentence passed by a judge is required, such as execution of murderers, restitution of objects stolen by thieves, beating of harm-doers, and matters other than these mentioned ones. Everything found in the Law of the Pentateuch was directed at attaining this [external justice] and making men perfect by spiritual deeds, just as Moses and Elias [were men] of perfect deeds.¹

The second, spiritual law is found in the second Law, which is the law of perfection. In it a law of reason is established for internal acts, by which man corrects himself within himself, between himself and his Creator, by his own will. [Such acts are] refraining from anger and from looking with concupiscence, loving the enemy, forgiving one who has sinned, abstaining from eating excessively and from drunkenness, and practicing humility towards all persons. These are things which a man who wants to be perfect does voluntarily; they are not matters for which judges decide against men with compulsion.

The second Law does not abolish what is contained in the first Law, since our Lord said: "I am not come to destroy the law but to perfect it."² Thus the duty of judges is not abolished, wherefore it is written in the tenth chapter of the Didascalia: "Forgive immediately the sin of your brothers, but we do not say this to judges." And it is testified in this and other books that many provisions laid down in them [are taken] from the Pentateuch. If, then, [a book like this]³ is written, it is right that what is said in the first Law regarding the duty of judges in adjudging men for their external action be written in this book.

Whatever is said in the second Law about the correction of man by his own will is written in the respective chapters [of this book]. In this chapter are found those provisions which are different from those dealt with in [other] chapters.

Before dealing with the first, we must say that when the second Law came, the first Law was not confirmed or repealed entirely, but was divided into four parts: The first is that part left intact, as it was before, because the provisions

1. It is also understood to mean that Mosaic Law deals with spiritual matters and not only with external justice, wherefore Moses and Elias were perfect (3/476).
2. Mt. 5, 17.
3. That is, the Fetha Nagast.

struck him shall be saved, but he shall indemnify him for the interruption [of his work] and shall give to the physician his wages.

"If someone strikes the eye of his man servant or his woman servant and makes him blind, he shall set him free in compensation for the eye. If an ox gores a man and kills him, the ox shall be stoned and its flesh shall not be eaten; the owner of the ox shall be saved. But if the ox was wont to push with his horn yesterday and the day before, and its owner was duly warned of this but failed to keep it in, the ox shall be stoned and its owner also shall be put to death; but if they adjudge, [imposing] a ransom upon him, he shall pay what is asked from him for his life. If the ox kills a man servant or a woman servant, the [equivalent] price shall be given to his master, and the ox shall be stoned. If a man opens a pit or digs a well, does not cover it, and an ox or an ass falls into it, the owner of the well shall compensate the owner [of the beast] and keep the carcass. If one man's ox gores another man's ox, and one of them dies, they shall sell the live ox and divide the price, as well as the price of the ox that died, between themselves. But if the ox was wont to gore yesterday and the day before and its owner did not keep it in, he shall pay ox for ox, and shall take the carcass of the ox that died."⁹

"If a person borrows a beast from his neighbor, and it is hurt and dies in the absence of the lender, the borrower shall compensate the owner of the thing. But if the owner of the beast was present, the borrower shall not pay him anything. If one takes a beast on hire and it dies, the owner [shall have nothing] but the price of the hire. If a man seduces a virgin not yet betrothed and lies with her, he shall give her dowry and take her for his wife. If her father refuses to give her as wife to the seducer, the latter¹⁰ shall give her dowry equivalent to the dowry which it is customary to give a virgin."¹¹ "Thou shalt not speak ill of rulers; thou shalt not curse the ruler of thy people. Thou shalt not delay [to offer] the first-fruits of thy harvest, and of thy wine press, and shalt give to Me the first born of thy offspring. The same shalt thou do with thy oxen, thy sheep, thy asses, and their offspring; seven days let it be with its dam, and on the eighth day thou shalt bring it to Me."¹²

"If thou findest thy enemy's ox or ass going astray, bring it back to him. If thou seest thy enemy's ass fallen under its burden, thou shalt not pass by, but thou shalt lift it with the burden. Thou shalt not partake in the killing of a just person, and shalt not save the sinner from his deserved punishment. Nor shalt thou take bribes, since bribes blind the eyes and change the right thing."¹³

TG. "Should anyone sin and err, through ignorance, in any one of the holy things of God,¹⁴ he shall offer a sacrifice for his offence against the holy things; he shall bring in addition to it fivefold of it and deliver it to the priest, who shall beg forgiveness for him through the holy things of the sacrifice, and he shall be forgiven. If anyone sins through ignorance in anything forbidden and prohibited by God, he shall offer sacrifice."¹⁵

9. Ex. 21, 1 ff.

10. But POEFNM 529-1 understands this passage as: "the father shall give"

11. Ex. 22, 14 ff.

12. Ex. 22, 28 ff.

13. Ex. 23, 4 ff.

14. That is, if anyone steals from the sacrifices offered to God, POEFNM 529-2.

15. Lev. 5, 15-17.

with a beast shall be killed and the beast shall be stoned. The magician and he who believes in him shall be put to death."²²

"Thou shalt not take an adulteress for a wife, nor one who was divorced. If the daughter of a priest has fornicated, she shall be burned at the stake because she dishonored her father. The high priest shall not tear at his hair, nor shall he tear his garments in mourning for someone who died. He shall take for [his] wife a virgin from among his own people; but a widow, a divorcee, or a harlot, none of these shall he take as a wife."²³

"Whosoever approaches holy things while he is impure, this soul shall be severed from Me; anyone who is of another tribe,²⁴ even the guest of a priest or his hireling, shall eat not of the holy things; but those whom the priest bought with his money and the one born in his house may eat of his food. If the daughter of a priest is married to someone from another tribe, she shall not eat of the tithes of the holy things. What has a blemish, you shall not offer, since it is not acceptable: all the tithes of oxen and sheep shall be holy to the Lord."²⁵

TD. "And God spoke to Moses and said to him: 'Say to the priests that they are to bless the people by saying: "May God bless thee and guard thee. May He send the light of his face upon thee and have mercy on thee. May He make His will abide in thee and give thee peace."' They shall invoke My name upon the children of Israel, and I will bless them."²⁶

TH. "Thou shalt not move from the command given to thee by the judges, neither towards the right nor towards the left. Thou shalt not produce only one witness against any man, whatever the wickedness and the sin be, but every word shall stand by the testimony of two or three witnesses. And if one bears witness unjustly against a man, the judges shall inquire diligently about him, and then shall do with him as he intended to have done with the other."²⁷

"Thou shalt bring back what fled from thy brother. If it is not something of thy relatives or of an acquaintance, bring it to thy house and keep it with thee until thy brother seeks it; thou shalt bring back to him his beasts and garments. As for whatever flees, it is not good that thou blind thyself regarding it. Men must not be dressed in women's apparel, nor shall women use a man's apparel. Women shall not dress as like men, nor men dress as like women, because it is an abominable thing. Thou shalt make a battlement in thy house, and shalt not leave any place which makes one fall from it."²⁸

"If there is any man who has stolen a soul from among his brothers and made him his servant or sold him, he shall be put to death."²⁹

"If there be a dispute between men, they shall be brought to the judges so that they may adjudge between them; the judges shall absolve the just and shall punish the unjust. If the offender deserves lashes, the judge shall lay him down with his stomach to the ground and shall have him flogged before him in the measure

22. Lev. 20, *passim*.

23. Lev. 21, 7 ff.

24. That is, a non-Levite.

25. Lev. 22, 3, 10 ff.

26. Num. 6, 23 ff.

27. Deut. 19, 14 ff.

28. Deut. 22, 1 ff.

29. Deut. 24, 7.

his footstool, nor by Jerusalem, for it is the city of the great King; neither shalt thou swear by thy head, because thou cannot make one hair white or black. Rather, let your speech be: "Yes, Yes," "No, No"; that which is over and above these is [born] of evil. You have heard that it has been said: "An eye for an eye and a tooth for a tooth," but I say to you, do not oppose evil against evil. And if one strikes thee on the right cheek, turn to him also the other. And if one will take away thy coat, let thy coat go also unto him. Whosoever will force thee one mile, go with him two miles. "One mile" means until that point the sight can reach.³¹ Give to one what he asks from thee; do not refuse the one who would borrow of thee. You have heard that it has been said: "Thou shalt love thy neighbor and hate thy enemy." But I say to you: love your enemies; bless them that curse you; do good to them that hate you; and pray for them that oppress you, persecute you and bring afflictions upon you, so that you may be the children of your Father Who is in heaven; for He makes His sun rise upon the good and the bad, and rains upon the just and the unjust. Be you therefore perfect, as also your heavenly Father is perfect."³²

Take heed that you do not your justice before men, to be seen by them; otherwise you shall not have the reward of your Father Who is in heaven. And when you pray, you shall not be as the hypocrites. Amen, I say to you, they have received their reward, and have received all their wages. When you fast, you shall not make your face sad as the hypocrites. Lay up to yourselves not treasures on earth, but in heaven: where your treasurer is, there is your heart. No servant can serve two masters; therefore you cannot serve God and wealth. Seek, therefore, first the Kingdom of God and His justice, and all this shall be added unto you. Be not worried for tomorrow, for tomorrow will worry for itself. There is sufficient evil in a day for itself."³³

"Judge not, that you may not be judged. Cast out first the beam of thy own eye and then thou shalt see to cast out the straw of thy neighbor's eye. Give not to dogs that which is holy. Ask and it shall be given you; seek and you shall find; knock and it shall be opened to you. And as you wish that men should do to you, do you also to them, for this is the Law and the Prophets. Enter in by the narrow gate that leads to the life, for wide is the gate and broad is the way that leads to perdition. Beware of false prophets who come to you in the clothing of sheep, but inwardly they are rapacious wolves; by their fruits you shall know them. Not everyone that says to Me: 'Lord! Lord!' shall enter into the Kingdom of Heaven, but he that does the will of My Father, Who is in heaven."³⁴

"I say unto you that every idle word that man shall speak, he shall render an account for it in the day of judgment. Whosoever shall do the will of My Father that is in heaven, he is My brother, My sister, and My mother."³⁵ "I do not say to thee thou shalt forgive thy brother seven times, but [that thou shalt forgive him] seventy times seven times."³⁶ "Whosoever wants to be great among you shall minister to you. Whosoever wants to be a chief among you shall be your servant."³⁷

31. In the POEFNM 534-3: "until the point where one can distinguish a man from a woman."

32. Mt. 5.

33. Mt. 6, 1 ff.

34. Mt. 7, 1 ff.

35. Mt. 12, 36, 50.

36. Mt. 18, 22.

37. Mt. 23, 11.

thieves nor the drunkards nor those who insult nor plunderers — none of these shall possess the Kingdom of God."⁴⁸

16. "Be zealous for the better gifts and I will show you yet a more excellent way."⁴⁹ "If I speak in the tongues of all men and the language of angels, and if I prophesy and know all mysteries and have all knowledge, and if I have faith sufficient to move mountains, and if I distribute all my goods to feed the poor, and also [deliver] my body to be burned, and yet I have not charity, it does not profit me. Since the one who has charity is merciful and patient, he is a good neighbor, he bears no envy, he does not blind himself.⁵⁰ He is not haughty, he causes not what makes [others] shameful, nor does he look for his pleasure only; he is not angry, he does not think evil, he does not rejoice in injustice and he rejoices in justice—he is patient in all things, he believes in all things, he trusts in all things, he serves in all things. These are the three things which remain: faith, hope and charity, but the greatest of all is charity."⁵¹ 18. "But be children in malice and be perfect in your counsel."⁵²

QORONTOS 3. "As we all must stay before the throne of Christ, He will reward each of us according to the deed each has done with his body, whether they be good or evil."⁵³ 4. "Be careful to give no occasion of scandal to anyone, so that blame may not enter into our ministry. But in all things let us exhibit ourselves as the ministers of God, with much patience in affliction and tribulation, in sickness and wounds, in fetters and exile, in labors, in vigilance, in fasting and in chastity, with knowledge, with forbearance, with sweetness, mercy and purity of spirit, with charity unfeigned, with the word of truth, with the power of God, with the weapons of justice in the right hand and in the left, in honor and humiliation, in benediction and curse."⁵⁴

GALATYA. "Bear one another the burdens of your neighbor; every man of you proves his own work. Be not deceived, God cannot be made a fool; a man shall reap what he has sown; the one who has sown the deeds of flesh shall reap from it corruption, and the one who has sown the deeds of the spirit, in spirit shall reap life everlasting. Since we do good, let us not be lazy, for in due time we shall reap. While we have time, let us do good works; let us not be lazy."⁵⁵

EFESON 3. "I beseech you that you walk as is worthy of the vocation to which you are called, humbling yourself with all carefulness, patience and mildness. Support one another in charity, careful to keep unity of the spirit in the bond of peace, so that you may be one body and one spirit."⁵⁶ 4. "Calm your anger before the sun goes down. Do not give the devil a way by which to seduce you. The one who steals shall steal no more, but let him labor, working with his hands to do good work by which he may help the poor. Do not let evil speech proceed from

48. I Cor. 6, 7 ff

49. I Cor. 12, 31.

50. That is, he is solicitous of others, POEFNM 538-1.

51. I Cor. 13, 1 ff.

52. I Cor. 14, 20.

53. II Cor. 5, 10.

54. II Cor. 6, 3 ff.

55. Gal. 6, 2 ff.

56. Eph. 4, 1-3.

CHAPTER XLVI

THE PUNISHMENT OF THOSE WHO DENY THE HIGHEST GOD, BLASPHEME HIM, AND WORSHIP OTHERS, AND ON WHAT LEADS TO THIS [IMPIETY], SUCH AS SORCERY, MAGIC AND FORETELLING [THE FUTURE] WITH THE FRUITS OF TREES, GRAIN AND OMENS.

Section I. Apostasy [from the faith]:¹

Our Lord has said in the Gospel: "It is written: 'The Lord thy God shalt thou adore, and before Him only shalt thou prostrate thyself.'"² And He commanded His disciples, saying: "Go and teach all nations, baptizing them in the name of the Father and of the Son and of the Holy Ghost."³ He also said: "Since God is spirit,"⁴ and also: "I and the Father are one, and all that which belongs to the Father is Mine."⁵ These words show that one must believe in the Divine Unity and the Trinity of the Persons, and in the equality of Person, in one Divine nature, and in His power, and in the greatness of His glory. Moreover, one must adore God only, and must prostrate oneself before Him only, because of the words of the Gospel: "And God is the Word, and the Word was made flesh and dwelt among us; we saw His glory, as the glory of the only begotten of the Father."⁶ This is the demonstration of the incarnation of God, and this is Christ, to Whose power glory is due, and to Whose benefices, thanksgiving. And the Highest—glory be to Him!—said in the Pentateuch: "I am the Lord thy God; thou shalt not adore another god beside Me,"⁷ and [what follows] to complete this word.

Section II. The punishment for each kind of apostasy:

It is divided into two parts:

The first deals with corporal punishment. TH. "If there arises in the midst of you a prophet, or one who has dreams; and if he gives you signs with certain words, and says to you: 'Come. Let us go and adore strange gods,' gods which you do not know, then you shall not hear either that prophet or that dreamer, for God your Lord tests you to see whether you love Him with all your heart and with all your soul or not. You shall slay that prophet or dreamer, because he has spoken lies against the Lord your God. And if thy brother or thy son or thy wife or thy friend seduces thee, and says to thee secretly: 'Let us go and serve strange gods,' gods of gentiles which thou and thy fathers do not know, then thou must not give thy consent, nor shalt thou accept his proposal. Thou shalt not worry thyself for him, nor shalt thou hide him. Thou shalt stone him to death; let thy hand be the first to stone him, and afterwards the hands of all the people. And if thou hast heard that impious men have risen in one of thy cities and seduced the inhabitants of those cities by saying: 'Let us go and serve strange gods,' gods which you do not know, then inquire into the truth of it, ask about it by questioning.

1. Arabic text: "on those things, the departure from which implies apostasy" (3/490).
2. Mt. 4, 10.
3. Mt. 28, 19.
4. Jn. 4, 24.
5. Jn. 10, 30.
6. Jn. 1, 1, 14.
7. Ex. 20, 2-3.

12. The Council of Nicaea has commanded that those who offer sacrifices to idols before being baptized by Christian baptism may join the priesthood after they are baptized. 3. Those who fled, whose property was looted, and who suffered affliction because they confessed themselves to be Christians,²² and by their conduct and the humility of their living regretted the apostasy they had committed, are devoid of sin; [all] these you shall not hinder from associating [with the faithful]. 6. Those who were made fearful by torture and have been moved [from the faith], and then returned with all their heart, shall be received and warned; they shall do penance. NIQYA 11. As for those who denied [the faith] not because of tribulation and affliction, you shall receive them and they shall do a hard penance.

GLOSS: NIQYA 54. And those who return to their faith [after having denied it], regardless of whether they denied it willingly or unwillingly, shall be demoted to a position inferior to their former one.

Section III. The punishment of one who leads others to worship another, who is not God — to Whom be glory! — as the highest God, such as sorcerers, magicians and soothsayers who foretell the future by watching the ground,²³ the fruits of trees, cherries, palms, shell, or omens:

TB. Do not allow the magician to remain alive. MAG. A man and a woman, if they are magicians or wizards, shall be put to death. They shall be stoned, since they are impious. Let their blood be upon them. TH. "Neither let there be found among you anyone who seeks the teachings of magicians and wise men,²⁴ nor one who is partial²⁵ or a diviner, or a soothsayer, or a user of trances, or one who consults diviners and evokers of the dead; for anyone who does these things is unclean before the Lord your God."²⁶ RSTA 29, 63. Magicians and soothsayers who foretell the future by observing the ground, the fruits of trees, and shells, those who invoke the dead and who interpret dreams, those who make omens and those who make booklets to be inserted in amulets, must abstain from doing so or be driven away. NIQYA 22. No Christian shall have relations with magicians or wise men²⁷ and one who does this — who communicates with them or consults them, believes their words, receives them in his house or goes into their house, and partakes of their food and drinks of their drink — if he is from the clergy, he shall be deposed from his rank, and barred from associating with the faithful; if he is a layman, he shall be barred from associating with the faithful. If they repent, they will be given a penance to do.

22. In order to make what follows coherent, Guidi suggests inserting here: "If against their will or by force one makes them commit apparent acts of idolatry..." (3/493). This, Guidi says, is the third Canon of Ancira.

23. According to Guidi, geomancy (8/493).

24. Guidi understands this to mean "astrologers" (text/494); POEFNM 543-3: "foretellers."

25. Arabic text: "... one who affixes with an evil eye" (2/494).

26. Deut. 18, 10-12.

27. Note 24, *supra*.

The first is the type which entails neither punishment nor condemnation to death, but only an order [to go into exile].⁷ This first is further subdivided into two parts. The first of these parts deals with one who does not intend to kill, but who killed [another] accidentally.

The second of these parts deals with one who intends to kill but is spared from being killed in turn.⁸ TB. "If a thief is caught breaking into a house, and is beaten and dies, there is no punishment for his killer; but if the sun be up, his killer must be put to death."⁹ TS 39. But anyone has the right to kill the thief if he cannot be saved from him without suffering some harm himself. 44. Nor is any guilt attached to the one who kills a man who comes into his home at night to harm him, as it is done in defense of his own life. 19. And the enemies who fight,¹⁰ and those who seek refuge with them, shall be punished with the sword. 42. And one who caught another who sinned with his wife,¹¹ and kills him, shall not be punished as a murderer. One who suspects a man of staining the purity of his wife, makes him aware of his suspicion three times, and sends someone to speak about it to him in the presence of trusted witnesses—[if this man then] kills him with his hand because the man is found speaking to her in his or her house or in a tavern or at a goldsmith's,¹² despite his warning, he shall not be held responsible. But if he finds him speaking to his wife in another place or in the church, let him deliver him to the person appointed to judge his guilt. If he convicts him before the judge by the testimony of three persons, the sinner deserves the punishment for fornicators.

The second [part, regarding the person who deserves punishment]:

On slaves and relatives:

As for the slaves, there are two sentences regarding them. First: TB. "If a man beats his servant or his maid with a stick and death ensues, he must pay the penalty he deserves, but if they live for a day or two, he shall go unpunished, since they are his property."¹³ TS 39. Whosoever flogs one of his servants with a whip or a stick, and death ensues because of this, his judgment must not be like that reserved to a murderer; but if one who flogs has flogged him a great deal, or if one has killed him with poison or burned him with fire, he must be punished as a murderer. The second sentence [regarding slaves] is: MAK 44. Should one's servant be guilty of fault deserving the punishment of death, his master must bring his servant to the judge so that he may be punished for his crime. If one who has no authority or right dares to kill him, then the judgment of death falls upon him.

Regarding relatives, two sentences are possible. First: TH. "A father must not

7. Following the gloss.
8. Arabic text: "Part II deals with one who must be punished . . . , that is, one who does not fall within the preceding case. And [the case of] the murdered person is considered in two aspects: 1) that his murderer should not be punished with death if certain conditions [are met], and these conditions are further divided into two types: a) he who did not have the intention to kill but who killed [another] by accident, or in defending himself from being killed . . . b) when the killing concerns slaves . . . 2) Where punishment with death must take place . . ." (2/496).
9. Ex. 22, 2.
10. POEFNM 545-3: "face-to-face," thus, the duel; "rebels" (3/496).
11. POEFNM 545-3: "One who having found another sinning . . ."
12. Arabic text: "in the fields" (1/497).
13. Ex. 21, 20-21.

stick, a big stone, or something else which entails death, a [death]²⁰ sentence must be delivered. But if the murder was committed with a lighter [weapon, the person responsible] shall be beaten and exiled.

Fourth, if this stroke falls upon another man by mistake and kills him, the striker may be saved if he takes refuge in the house of God. Otherwise, the judge shall adjudge between them and make peace with the people of the [victim's] blood. This is mentioned in the second part [at the end of this chapter], because he did not do this to kill, but merely intended to strike; he was killed by mistake. If peace is not made between them, he must go into exile.

Fifth, the case of a person who without any intent to kill beats another with an excessive number of strokes by an instrument not likely to cause death, like a small stick or the leather of an ox, and kills him. This word²¹ is similar to the judgment regarding slaves, mentioned before. Whenever one beats another with a rope or a small stick, and from this death ensues, he shall not be given the judgment due to a murderer; but if he beats [his victim] excessively and without pity, he shall be punished as a murderer.

Sixth, if this stroke went past, missing the person it was meant for, and fell upon another person and killed him, the judgment shall be similar to that mentioned in the fourth part. This is definitely less serious and smaller than the two cases²² and the two strokes mentioned before.

Seventh, if a person beats another with a small instrument from which death does not [usually] ensue, taking the necessary precaution, such as beating a healthy young man with his hand or with a small stick repeatedly, but not to such degree that death will follow,²³ and death ensues because of this or some similar reason: or the stroke lands on someone else and kills him; TS 49, or if someone in a brawl strikes another with his hand and kills him; [in each of these cases] the killer shall be beaten and exiled.

Eighth, whoever intending to play in jest pushes another into water, or pushes him from a high to a low place, or frightens another with a sword, and because of this or similar actions death follows, or the death of another is caused, the judgment is similar to the first.²⁴

Ninth, concerning one who has no intention to kill or to strike another, his intention in fact being directed to another thing, such as striking a beast or drawing the bow to kill a wild animal. If such an individual happens to kill a human being, the consideration of his case falls into two parts.

The first of them concerns the case in which it is known that the killing happened in a place used for hunting, where the killer shot an arrow at a bird²⁵ or a wild animal in the midst of people or in the midst of a town in which people stay. This man, as he had no intention to kill a man either before or after and

20. Following the gloss.

21. "This judgment," POEFNM 548-3.

22. These "two cases" are those dealt with in the first and second types of homicide, 1) killing a certain person intentionally; 2) killing one person by mistake intending to kill another person. The Arabic text reads: "But this judgment is made lighter in proportion to the difference between the two instruments with which the blow was inflicted, and the blows" (3/500).

23. Arabic text: "... where the beating does not cause death" (4/500).

24. That is, to the preceding seventh part.

25. Gloss: "with the purpose of shooting a bird."

in a high place and causes him to fall, and another strikes him with a sword or some such thing in such a way that he dies; or he falls alive but an ox gores him and he dies instantly; or a man throws into the sea a person who can swim, but a whale devours him; or a man wounds another in such a way that the latter becomes ill, and a third person wounds him during his illness and because of this second wound he dies: in this and similar cases an investigation must be made about the intention of the doer.³³

In case several persons agree to kill someone and join in killing him, acting together, they shall all be condemned to death. If a single man kills many persons he alone must be condemned to death. And the judgment shall be passed on the basis of the action owing to which the killing happened, and not on the basis of something new, which may happen later—for instance, if one kills while he is a minor or mad, there shall be no action against him with penal judgment when he attains majority, or after he is cured of his madness. And peace shall not be made either with ransom or with exile instead of penance, but the guilty must be absolved by doing penance,³⁴ since penance is spiritual punishment and ransom or exile are corporal punishments. The murder committed by a man with knowledge is not [committed by] the soul or [by] the body only.

Notice that the scope of this chapter concerns everyone who desires to kill a person and kills him. His punishment is that he be killed or the family of the victim come to an agreement: whether to accept blood-money or to forgive the murderer completely. MAK 49, 87. If he has not killed voluntarily, he shall be exiled. TD. "If the striking was accidental, without any enmity, or if out of malice one threw a stone or some other thing which brings about one's death, unaware that he would die, but he does die, without having any feeling of enmity or evil, judgment shall take place between the slayer and he who claims the blood; due consideration shall be given to the case, and the slayer must be rescued from the power of the avenger of the blood and sent to a place [of refuge] and make his home there."³⁵ TB. In case he had no intention to kill him, but God provided the occasion for the death of the other by his hand, he may take refuge in the place of God: but if the avenger of the blood finds him outside [the place of refuge] and kills him, he will incur no guilt. MAK 39. One who by his power and with violence takes a person seeking refuge in a holy church out of that church shall be beaten and his hair shall be shaved. He shall be sent into exile and remain there forever. In case the slayer could not flee [to a place of refuge], MAK 101, the judges have to judge between the slayer and the avengers of the blood by making peace. They shall save him from them whether the avengers agree or not,³⁶ because he had no intention to kill him. In case the slayer is proud and lets himself be seen by the kinsmen of the man he killed, boasting of himself against them, and they kill him, they shall not be held guilty; there shall be no punishment for his killers, for he should not be seen until the end of their mourning.

§. On what leads to the punishment of death other than what has already been dealt with: this paragraph is divided into two distinct parts:³⁷

33. "To know who is his enemy," POEFNM 551-2.

34. Peace shall not be made by disregarding penance as something unnecessary (6/503).

35. Num. 35, 22.

36. Gloss: "they shall reconcile them whether they wish it or not."

37. That is, two books, the TB and the MAK (3/504).

turn that punishment for which he had accused the other.⁴⁴ TH 5; MAG 107. "When you find a murdered man in a deserted place or a field and no one knows who killed him, then your judges and elders shall go out and measure [the distance] between the place where the murdered man was and the city. [They shall see] which city is nearest to the murdered man, and then the elders of that city shall take an oath and say: 'Not ours the hand that shed this blood; our eyes never saw who killed him.'"⁴⁵ And you, [O judges], make inquiries about this blood and judge the matter with righteousness.

Section on spiritual punishment:

RSTB 47. Should a priest fight with someone and strike him until he dies, he must be deposed because of the cruelty of his heart; if he is a layman he must be sent [into exile].⁴⁶ ENQORA 21. He who murders intentionally must do penance until the end of his life; it is known that he fully enters the community of the faithful at the end of his life, by means of the Eucharist. 22. To him who kills unintentionally, the first provision is that he do penance until the end of seven years, staying in a lower degree; then he must do penance for three years more.

BAS. With respect to one who killed a woman, the council orders that he be expelled from the community of the faithful for twenty years; he must remain outside the door [of the church] for three years, weeping and watching his co-faithful enter; for six years he shall stay with the faithful, and for eleven years with the catechumens.⁴⁷ But in case he is seen doing hard penance for his crime, do not make the duration of his penance heavy [upon him]. For him who kills unintentionally, the time of penance shall be half of this time only.

BAS 27. If a man makes a woman abort with poison and lies with her, he must remain outside the church for the rest of his life; only at the end of his life or in danger,⁴⁸ may he be deemed worthy of receiving the Mysteries, because he has committed the three gravest sins: fornication, homicide, and sorcery. ENQORA 23. As for women who commit adultery, kill their children, and hide their death, it was first provided with reference to them that they be expelled [from the community] until the day of their death, but because of the great mercy of God towards us, the penalty shall be for ten years, in accordance with the provision laid down [later].

44. This is understood to mean: "If the accuser loses the case, he shall be condemned to the punishment the accused would have undergone should the accuser have won the case," POEFNM 554-2.

45. Deut. 21, 1-3.

46. Gloss: "from the Eucharist"; hence, *εἰς τὸ*: "to be sent away," might be taken to mean "barred from receiving the Holy Eucharist," in parallel to the punishment awarded to the priest, who must be deposed from his priestly rank. The POEFNM 554-3 also says: *εἰς τὸ*: that is, "he shall be separated [from the faithful]."

47. The punishment is less severe because women, it is said, more easily create causes for murder (3,507).

48. Gloss: "if he is on the verge of death."

her, a third part of his property shall be given to her after he is awarded this punishment.

IV. 41. Those who kidnap a betrothed girl, a girl not yet betrothed, a widow, be she one who is of noble birth or a woman slave, or a manumitted woman — especially if she is one of those who by their behavior hold themselves apart for God's sake⁶ — shall be punished with the sword if they did this with violence. Those who were their accomplices in any way, or helped them, shall be beaten; they shall have their heads shaved and their noses cut off, and then they shall be exiled. If they did not do this with violence, only the hand of the kidnaper shall be cut off. And those who helped him shall be beaten, shall have their heads shaved, and then shall be exiled.

If a slave dares carry off his mistress, and if another helps him in this, they shall be burned at the stake together. If the slave is aware of a scheme to kidnap his mistress and does not help her in this, he shall be consumed by fire.

V. 65. If a man has carnal relations with a virgin outside the knowledge of her parents, be it with her consent or without it, her parents have the choice of fulfilling his desire [or not] if he wishes to marry her. If one of the parents refuses, the man who spoiled her shall give her a pound of gold, if he is rich and can do this. If he cannot, he shall give her half of his property. If he is absolutely poor, he shall be beaten, have his head shaved, and then be exiled.

VI. On a woman who fornicates with a male slave or man who fornicates with a female slave:

44. If a woman who has a husband commits adultery with her slave, she shall be beaten; she shall have her head shaved, and her nose cut off, and then shall be expelled from the city in which she dwells, and shall lose every honor. As for the slave who sinned with her, his punishment is the sword. 45. In case a woman who has no husband commits fornication with her slave, if she has no children she shall be beaten and shall have her head shaved; the slave shall be beaten, shall have his head shaved, and then shall be given and sold to the governor.⁷ If the woman has children, all her property shall be given to her children, but it shall be entrusted to the king for safe keeping; only the work shall be in her hand.⁸ The price of the slave shall also go to her children.

61. Whosoever has a wife and lies down with his female slave shall do penance with beatings when his deed is discovered.⁹ The governor of the country shall take this female slave and sell her to another country; he shall put the price she fetches in his treasury. The one who sins with a female slave who does not belong to him shall give to her master thirty-six dinars¹⁰ of gold if he is rich. If he is

6. Those who have consecrated themselves to God by giving up the world (1/510).

7. More precisely: "he shall be given to the governor, who shall sell him," POEFNM 557-3.

8. She shall have nothing, but must work for a living by her hands, POEFNM 557-3 and (1/511). The Arabic text says that she has only the use of the goods (1/511).

9. That is, he shall be punished by beatings, POEFNM 557-3.

10. Gloss: "12-12+12." Guidi explains that thirty-six dinars are fixed for three faults — twelve dinars because he has not observed the commandment: "Thou shalt not commit adultery"; twelve dinars because he has not observed the commandment: "Thou shalt not covet thy neighbor's wife"; and twelve dinars because he has not observed the commandment: "Love thy neighbor as thyself" (3.511).

his sin is not similar to that of the layman. [he shall never return to his rank].¹³

83. If an unmarried priest falls and commits fornication, but is not accustomed to it and had a good reputation from the beginning, his penance shall be to fast and pray for one full year. In addition he shall give alms from his own property according to his ability, and shall be deprived of the rank of his office until the end of his year of penance. Afterwards, he may resume his office and the saying of mass, as it was before. In all his days he shall be vigilant about himself. And if, after the penance, he returns again to doing similar things, he shall be deposed from his priesthood; however, he shall not be prevented from associating with the faithful or from receiving the Eucharist. But if he is married, and his wife was with him in his house, he shall be condemned to do penance similar to and double that of the preceding case.¹⁴

A deacon who is not married shall be treated like a priest on his first [offence].¹⁵ For any subsequent [offence], his penance is to fast one year. If he errs a third time, he shall be barred from his clerical office. If his wife was in his house, she shall be left in penance, after being barred from altar service, for three years. After the completion of three years, he shall be restored to his former position. If after this he returns to sin, he shall be dismissed from his clerical office forever.

In particular, a bishop shall definitely be barred from his rank after his first sin; there is no penance [for his rehabilitation], but he shall not be forbidden to associate with the faithful and to receive the Eucharist. A priest who has no wife may return [to his priesthood after having done penance], but one who is married may not return. The deacon who has no wife may do penance twice,¹⁶ but the one who has a wife may do penance only once. They, however, shall not be prevented from receiving the Eucharist and from associating with the faithful; they shall be forbidden only from serving at the altar.

The chief of the monastery and the judge shall sentence the rest of the clergy, the monks and layman, [to do penance] according to the gravity of their sin, if they commit a sin similar to this. But they shall not make the burden of penance too heavy, lest sinners be lost and abandoned by God. [Repented] sinners shall not be neglected, lest they return to their vomit and their sin—lest their loss thus be doubled. He who rejects this precept shall be excommunicated by the council.

II. On other members of the faithful:

NIQYA 74. If there is a member of the faithful who follows an unbelieving woman, or a faithful woman who follows an unbeliever because of fornication in such a way that the one causes the other to abandon the faith, their penance shall be to stay at the door of the church for three years, wearing sack-cloth, and lying down in the dust. Then they may enter the church alone, separated [from the other faithful], for one year; the people of the church shall not communicate with them, either greetings or the Eucharist. After the completion of this year, the priest shall bless the water and the oil [with a benediction] other than that used in baptism—without the chrism, but using the benediction with which water and oil for the sick are blessed. Then the priest shall take some of that water and sprinkle

13. Following POEFNM 559-2.

14. Considering that the priest has a wife, he is condemned to do penance for two years, POEFNM 560-1.

15. POEFNM 560-1 says: *ἄλλοτὶ ἑνὸς ἐτῆος*; "he shall do penance for half a year."

16. That is, he may be forgiven and readmitted to his service twice.

CHAPTER XLIX
CORPORAL AND SPIRITUAL PUNISHMENT OF THIEVES

I. As is written in the second book of the Pentateuch: "If there is a man who steals oxen or sheep and slaughters or sells them, he must make restitution at the rate of fivefold for one ox, and fourfold for one sheep.¹ If what he stole is not found with him, and he has no property, he shall be sold for the thing which he has stolen.² If the stolen ox, ass, or sheep is found alive in his possession, he shall make restitution twofold for one. If a man does not take care of his beasts, so that they feed in another's field, he shall give the best fruit of his seed in compensation."³ And in the fifth book of the Pentateuch it is said: "If there is anyone who steals a person from among his brothers, or cooperates so that he may be stolen, or sells him, he must die."⁴

In the canons of the Kings there are five sections:

I. TS 39. If a man enters the church⁵ in the daytime or at night, and takes something of what is within it, let him be marked with a red-hot iron. If [he takes] from the land around the church, let him be beaten and have his head shaved; then let him be exiled.

II. MAK 110, 121. Our law commands that those who steal children, be the latter slaves or free; and those who pass through a country and take away beasts such as horses, oxen, male or female;⁶ these must be killed⁷ or exiled⁸ beyond the boundary of the country. And their question is brought to the power of the judge so that he may punish them according to their guilt, be it little or great. TS 39. Those who for the first time drive away cattle that do not belong to them shall be beaten; on the second time, they shall be exiled; and on the third time, their hands shall be cut off. The cattle shall be returned to their owner.

III. TS 39. Let the hands of him who becomes chief of the robbers, [and who is also] a murderer, and the hands of his accomplices, be cut off. Those who steal from the camp shall be beaten with a painful stroke, if they stole weapons

1. Gloss: "fivefold, because it is a great impudence; after having taken an oath; it has a metaphoric sense." As it is an impudence to steal something that is difficult to hide — as in the case of an ox — the punishment is more severe. However, this punishment is meted out only when a thief takes an oath denying the theft; if he admits his guilt before taking the oath, he will not be punished in this severe manner.
2. According to the POEFNM 563-2, *למכור*, "he shall be sold," means that his work shall be sold. That is, he shall work for the person he robbed until he compensates him for the value of the stolen property. The Arabic text states that he shall be sold (as a slave) (3/516).
3. Ex. 22, 1 ff.
4. Deut. 24, 7.
5. *קדוש*: as in the text, usually means the sanctuary of the church, where the altar is placed; but here it means the interior of the church in general, POEFNM 563-3; (5/516).
6. Read: "male or female children," POEFNM 564-1; Arabic text: "women" (3/517).
7. Gloss: "those who kidnap children."
8. Gloss: "those who steal beasts."

purpose of causing damage to its inhabitants shall be burned. TS 49. If it is known that a certain person has burned a dwelling place knowingly and voluntarily, he shall be punished. If someone burns a field entirely,¹⁶ and the fire burns the houses around it, the one to burn first has no fault.¹⁷ If one puts fire to his fields, and it spreads and burns the harvest of his neighbor, they shall examine whether he was as careful as possible lest the fire spread to other places. [If he was not careful], he shall draw the judgment accorded to the negligent. But if he was careful in everything, and the wind overcame him and spread the fire, the person who lit the fire is not liable.

VII. On miscellaneous sins:

TS 38. If the body of a free man is burned,¹⁸ the judge must give judgment against the actor for any medicine or work,¹⁹ but for the disfigurement of the face there is nothing [to pay], because the body of a free man is not susceptible to measurement by price. Whoever burns a part of the body of a slave shall pay according to what we have said regarding objects that diminish in value. 39. A person who keeps an animal that does not belong to him tied up, and then kills it for lack of food or for another reason, must pay double. One who takes possessions by violence or removes a boundary must give back double of what he took. And young men who disturb the assembly, and persist in their mistake despite the warning given them by the governor of the city, shall be exiled. If they have been punished many times and persist in their impudence, they shall be beaten and have their heads shaved and then shall stay perpetually in exile. But if the chief had not warned them, they shall only be beaten with a stick, and then shall be left free. He who makes a seal with dinars shall have his hand cut off.²⁰

VIII.

MAG 14. A person who transgresses against a priest of the church shall be beaten and exiled. One who transgresses against a person who took refuge in a church, pulling him out of it violently, shall be flogged twelve times; the fugitive shall be taken [by the competent judge] in the manner due to a fugitive who took refuge in the church.²¹ But [it is suitable that] the fugitive be taken by the priests and by God-fearing men from among the elders; they shall find out why he fled, and judge him according to the law.

GLOSS: Those who are found to be apostates and [others] who defect [from the faith]²² shall inherit neither from the testator nor from the one who died intestate. If the relatives are of the Orthodox faith, and provided that the children be of the same faith, [they shall inherit]; otherwise the property shall be given to the king. Those who are separated from the faith cannot make wills; nor can they make donation, either with a will or without; they shall inherit nothing.

16. Arabic text: "... if a house burns accidentally" (4/522).
17. Read in conjunction with the Arabic text in the preceding footnote, "the one from whose field the fire spread is not at fault" (text/522).
18. Arabic text: "if the body... is damaged" (7/522).
19. That is, the judge shall condemn the actor to pay for medicine and to indemnify the injured person for the loss the latter underwent due to his inability to work.
20. Arabic text: "He who made false money..." (3/523).
21. Following POEFNM 571-2.
22. POEFNM 571-2: "Those who become apostates during their parents' lifetime and those who become such after their parents' death."

prohibited such a thing. Do not take from the hair of your beard when you shave the hair of your head.¹⁰ Do not make an ornament from the hair of your head on yourself. Apostle Paul and the Council of Gangra, when they forbade women to shave their hair, did so for them only, excluding men.

As for circumcision, it is from the precepts of the Old Testament. It is commanded to the people of God so that they may be separated from all other people, as slaves are marked for their master. And therefore one must be given a name only after circumcision. The word of Luke in the Gospel shows this when dealing with John and Our Lord, by saying: "They came to the child to circumcise him and they gave him a name."¹¹ But when the Christian Law gathered all people, it was established that man created with soul and body should have a spiritual name,¹² which is baptism, by which Christians are distinguished from others. It was established that the conferring of a name takes place at the time of baptism, just as masters find and give a name to their slaves. And because of this reason, it was necessary for the first woman to go to Adam, so that he might give her a name, by virtue of his authority and mastery over her. And in this manner the created animals came to Adam, so that he might give them their names according to [some] sign, by virtue of his authority and mastery over them.

But in the New Law, circumcision carried out by the one who circumcises is according to custom and not according to legal precept. Thus, it is said in the Pentateuch to do it on the eighth day after the birth of the one who must be circumcised. If done on another day which is not the eighth one, it is not considered as a legal circumcision. The followers of the New Law who practice it do not do it on the eighth day and do not choose this [day].

Among us, circumcision may be omitted, or may be done without any legal prescription. The words of the Apostle Paul in the seventh chapter of his first letter to the Corinthians show this. He indeed has said: "Circumcision is nothing and the prepuce is nothing, but justice is observance of the Commandments of God."¹³ Similar is his saying to the Galatians in the fifth [chapter] of [his letter]: "To be circumcised avails nothing, nor to be uncircumcised; but faith which is fulfilled with charity."¹⁴ And he has repeated this in the sixth chapter of the same letter, saying "Circumcision and the prepuce are nothing; but the usefulness of deeds¹⁵ is the new creation which is baptism."¹⁶ The external interpretation of his words reveals a prohibition of circumcision, because his intent was to prohibit the obligation [to observe] the law of the Old Testament, the basic [precept] of which is circumcision. And Paul has called the [Ancient] Law by its basic [precept],¹⁷ as the Holy Books get their names from their basic [contents], such as the book of Creation and the book of Numbers. In the same way the Law of the Old Testament is called by the name of circumcision in the place already mentioned, and the other¹⁸ is called by the name of prepuce. This is demonstrated by his words in the seventh chapter

10. "When you shave your head, do not shave your beard" POEFNM 573-2.

11. Lk. 1, 59; 2, 21.

12. Arabic text: "a sign, a mark" (1/526).

13. 1 Cor. 7, 19.

14. Gal. 5, 6.

15. POEFNM 574-3: "the useful deed."

16. Gal. 6, 15.

17. The sense seems to be that Paul called the Ancient Law the Law of Circumcision because circumcision was a basic element of its teachings.

18. The Law of the New Testament.

people, and their young people are inclined to evil things—so much so that they have themselves circumcised after baptism. However, they should abstain from circumcision [after they have been baptized].³⁰ And there are other necessities which have been mentioned also in a book other than this one. As for utility, a sage among the philosophers and those who know science in all its aspects has said that with circumcision, the organ of concupiscence becomes weak and cool.³¹ [When practiced] with agreement,³² circumcision is advisable in the saintly [Christian] law.

[As for confession of sin,] the confession is a spiritual medicine. It is called spiritual because it establishes a relationship with the Holy Spirit, just as a blood relationship unites with blood [relatives].³³ A physical recovery is not attained, unless through the hands of a wise and good physician. When there is no [such physician], refusal to be treated would be better than being treated by a foolish and wicked [physician]. Moreover, [recovery is attained] when the sick person accepts what is done for him [as being deemed] useful for him by those who prescribed it: [it is also attained] when, provided that this is possible, the treatment is [prescribed in consideration of] the time, the place and his capacity [to bear it]. Otherwise, there would be no benefit. So also is it in the case of spiritual [medicine]. And as there is no benefit if one who has good knowledge of medicine is not found, so also the required confession of sin is in two parts.³⁴ Only seldom are [these conditions] found everywhere.³⁵ One of the patriarchs of the Copts forbade confession in the world³⁶ because of the fact that the three conditions³⁷ without which confession cannot be undertaken properly are not found together. Just as not all men who desire [to be cured] like corporal medicine, so also is it with spiritual medicine. Just as all those who need medicine do not need it each time or for every sickness, so also is it with spiritual medicine.

[Regarding what the chief of the church may add or repeal,] the power given the chief, namely the patriarch, to add [new laws] or to repeal [existing ones] is in the measure that he sees as advantageous in his time. And know that the scope of law is divided into two parts. One of them concerns faith in the Highest God; the other concerns doing what pleases Him.

30. Following POEFNM 576-3.

31. ተረፈ : "diminishes," is rendered as ይበርዳ : "becomes cool," POEFNM 576-3.

32. That is, without discussing whether it is commanded or prohibited by the Holy Books, POEFNM 576-3.

33. The Arabic text says that confession is a spiritual medicine which suits the spirit just as corporal medicine suits the body (3/529).

34. That is, the confession of sin requires two conditions: that there be the spiritual physician (the priest), who knows how to treat the sick (sinner); and the patient (sinner), who accepts the spiritual treatment.

35. The Arabic text provides that for medicine to be of use to the body, the following elements must be present:

1. A good physician.
2. A patient to take the treatment.
3. The possibility of this treatment.

It goes on to say that these three conditions must also be satisfied in spiritual medicine, namely, confession. But as it is seldom possible to meet all these conditions, confession is not obligatory for Copts (6/529).

36. በዓለም : "in the world" means "in his time" (1/530).

37. See n. 35, *supra*. The POEFNM 574-3 says that these three conditions are ሥልጣን፣ ክህነት፣ "power by virtue of the holy order of priesthood," ግብር፣ ግብነት፣ "jurisdiction," ትምህርት፣ "doctrine."

agreement upon it arrived at by the priest and magistrates. If it is an important matter, it is proper that the bishop and the senior priests, the magistrates, and those who have knowledge and who practice justice, meet to consider it. They shall affix their signatures to what is written, and shall make from it other copies. These shall be read in the churches, before the clergy and before all the people, whether in the cities or in the villages.

§. Regarding the necessity of conforming to the last canon of the Council of Nicaea:

The chief of the Church shall consult the Divine Books and ask the soldiers of the Church,⁴¹ since he knows that God has commanded all this. And if someone transgresses what we said above, he opposes God. And Our Lord has said in the Gospel: "The one who is of God hears the word of God."⁴² And He has also said: "Blessed is the one who hears the word of God and keeps it."⁴³ And He said to His disciples: "The one who hears you, hears Me, and the one who refuses you, refuses Me."⁴⁴ And the Apostles also, at the end of the canons whose number is fifty-six, have said: "We command you, O bishops, this canon. If you will persevere in it, you will be freed and have peace until the end. But if you will not now accept and obey what is in it, you will be scorned and will bring grief⁴⁵ among you; and after this, you will have the punishment suited to your rebellion."

May God, One with His Son and the Holy Ghost, Creator of all creatures, unite all of you in one single body with His great peace and prepare for you every good thing, so that you may not return back [to evil deeds] and so that you may be without stain or sin. And may He make you worthy of the dwelling of life until eternity, through His beloved Son, Jesus Christ, Our God, Creator, Our Redeemer. To Him, therefore with Him, be glory, and with the Holy Ghost, world without end. Amen.

41. That is, the learned men of the Church.

42. Jn. 8, 47.

43. Lk. 11, 28.

44. Lk. 10, 15.

45. Arabic text: "...you will cause war" (3/533).

Section [II]. The succession of a woman together with the heirs of her husband:

If the heirs are her children, and if they are three or less than three, she shall be given a fourth part of the estate. If they are four or more she gets a share equal to that of one of her children. If the heirs of her husband are his relatives, she shall get one half of her husband's estate and they shall have the other half. But if he had no heir who is a relative, she will succeed to whatever was left by her husband. This provision regarding her is applicable to her husband as well.

In the case of a betrothed couple, if death of the woman occurs, the man or his heirs after him shall take from among the objects of the woman or from her family whatever [she or] her family took from him, [such as] dowry and presents, with the exception of what was eaten or drunk or some such thing. If the man dies without leaving heirs, whatever she or her family took from him shall be left with her; but if he has heirs, she should return whatever she or her family took from him, [that is,] only the dowry, without the rest.⁸

Section [III]. The degree of the heirs:

The first degree is the male and female children, be they married or not; they shall share equally their father's and mother's estates. If one of the children dies before his parents, and is survived by his children, the latter shall be called to succeed their [paternal] grandfather along with their father's brothers and sisters, and their [maternal] grandfather together with their mother's brothers and sisters. They shall inherit the share their father would have received if he were alive. The grandchildren's degree comes next to the children's degree, in accordance with its line, degree after degree, as was said in the degree of the children.

Second degree. If no descendant of the deceased is found, his father and mother shall succeed to all his inheritance. The father gets two thirds and the mother one third, respectively. If one of the parents is dead, the parent's share goes to his children, who are the brothers and sisters of the deceased.

Third degree. If the deceased has neither father nor mother, all of his inheritance shall go to his brothers and sisters, male and female getting equal shares. Two thirds shall go to the paternal brothers and sisters, and one third to the maternal brothers and sisters. The paternal and maternal brother thus shall have half of the estate: the paternal brother shall receive only one third, and the maternal brother a sixth part. If one of the brothers is dead and is survived by a son, the son shall succeed to his father's share, along with his father's brothers and sisters, and shall succeed to his mother's share together with his mother's brothers and sisters. The rule that governs the succession of the children is that applied in the case of their fathers, degree after degree, one after the other.

Fourth degree. If the deceased is not survived by brothers, sisters, or their descendants, his estate shall be divided [as follows]: Two thirds of it shall be shared equally between his paternal grandfather and grandmother, and one third equally between his maternal grandfather and grandmother. And his estate shall be divided into nine parts, six parts to the paternal grandfather and grandmother or to one of them, if the other and his descendants are missing, and three parts to the maternal grandfather and grandmother. If one of the grandparents is dead, his share shall go to his children together with the surviving grandparents.

8. According to the gloss, "the rest" means $\text{תְּרֵי$: "the bride's outfit." But the outfit belongs to her; then, "the rest" connotes objects which are edible and drinkable. The POEFNM 583-1 interpretation says: "except what has been eaten or drunk." See also (1/536).

father and of the same seed of his mother: but if the brothers differ from each other,¹¹ those after them shall be [treated] like them.¹²

As commanded by God in the Pentateuch, the one whose father is dead succeeds to the share his father would have received had he been alive. And the inheritance of him who has no heirs shall go to the treasury of the church; the slaves who form part of it shall be set free. He who is born in lawful wedlock after the drawing of a will shall inherit with the previous children, and shall be considered as one of them.

GLOSS: The provision that the children and their descendants should be called to succeed their deceased parents is in accordance with nature. If the deceased have no descendants, their parents and the children of the latter, who are the brothers of the deceased, shall succeed them. If the descendants of the above people are missing, the deceased's grandparents shall be called to succeed, and their children, who are the paternal and maternal uncles of the deceased, come after them. As for the one whose degree's descendants have run out, his grandparents shall succeed him, and their children, who are the brothers and sisters of his father come after them. The one whose descendants have run out shall be succeeded by his great-grandparents, and their children after them,¹³ because this is the judgment of a natural death, that is, the death of the parents precedes the death of the children.

Section [IV]. The succession of bishops and monks:

Property belonging to the church shall be known and separated from the property of the bishop so that his property may be kept for his heirs, so that he may bequeath it to the one he wishes, and so that the church's property may be kept for it. Whatever he acquires because of his episcopacy shall belong to the church; he shall not dispose of it by will, nor shall his family inherit it. But whatever he owned before his episcopacy or whatever profit he obtained from his property not acquired by virtue of his episcopacy, such as an inheritance as an heir at law or by will, may be disposed of by will in favor of the person he wishes [to give it to]; if not, it will be left to his heirs at law. If he owns nothing, the poor member of his family shall be maintained from what he left to the church.

No layman shall inherit anything from a monk unless none of the deceased's relatives¹⁴ is found except him. [That is,] no layman shall inherit [from a monk] unless he is one of his relatives and [also unless] the monk had no communion in monastic life either with one other monk or with the other monks who dwell in a monastery. If between him and the monks of a monastery there was communion in monastic life, and dwelling together in the monastery, all of his property shall go to the community [of monks], be they many or few. If he dies outside their monastery and has an heir who is a monk living outside or inside the community, the latter shall not inherit alone, excluding the others. If property left by him is found outside the monastery, and it is something which he disposed of by will in

11. That is, if they are not full brothers (text/538).

12. That is, half brothers are treated according as they descend from the father's or the mother's side.

13. The POEFNM 587-1 rendition is followed in the translation of these passages.

14. Gloss: "spiritual relationship." These "relatives" are fellow monks, who have priority over others in inheriting from a deceased monk. Only if the monk has no brother monks may a layman succeed him, POEFNM 587-3.

A wife's condition with respect to inheritance from her husband is the same: if he divorces her because of a fault she did not actually commit, or [if he attempts to disinherit her] of the fourth part [due to her], this should be disregarded; if there are other heirs, she shall share¹⁹ with them. Similarly, if a person wishes to have his daughter or his son's daughter married and she refuses, preferring to go to shameful deeds, [she shall be disinherited].

Section [VII]. Those who may not inherit despite a will in their favor:

An infidel shall not inherit from a Christian unless it is ascertained that he embraced the faith before the partition of the property left by the deceased. He who killed the person he is supposed to succeed [shall not inherit from him]; neither shall the person who delivered him to the killer. He who sets about ruining the testator's life by feeding him poison or any such thing [shall not inherit from him] unless the latter has made his will after this.

Section [VIII]. Doubtful cases:

This section is composed of two parts.

First. If two or more persons [who are the] heirs [of one another] die while they are on a journey, or die by drowning or a fire or because a house fell upon them, and especially if it is not known who survived whom, one shall not succeed the other. Neither of them shall be called to succeed the other, rather one from among the living who has the right to succeed, and not one from among the dead, since who died first and who died next is not known.

The second part forbids the sharing of the property due to doubt [created] in one's mind by the absence of one who is in prison or on a journey, particularly regarding one about whom there is no news. They shall not divide the estate among those who are present, if the death of the missing person has not been ascertained and if such a time of absence has not passed that a judge would make the judgment that a person such as him cannot still be alive.

If [an heir] is said to have died, and he has a relative in the country,²⁰ the former's share shall be set aside and put in deposit until a decision is made regarding him²¹ with knowledge and intelligence, according to what is proper in cases similar to his.

*** * ***

19. Reading ትትካረል : "she shall share," instead of ደትካረል : "he shall share," POEFNM 590-2.
20. Following POEFNM 591-1.
21. That is, until a decision is made whether he is still alive or not, and will return or not, POEFNM 591-2.

GLOSSARY

The following glossary has been compiled in the hope it might contribute, in a preliminary way, to the important work of building a standard Amharic legal terminology. It is simply a list of words of legal import which appear in the Fetha Nagast, alphabeticized according to the English translation they have been given above.

Each entry contains the following information:

First, the English rendition used in this text, with an indication of the intended sense where this was thought useful;

Second, its Ge'ez equivalent;

Third, the page and column of the *Photo Offset Edition of the Fetha Nagast* where the Ge'ez may be found in context. This citation is constructed in the same manner as the footnote citations to this work, see p. xxxiii *supra*;

Fourth, the corresponding page of this translation.

In some cases, a second Ge'ez equivalent, with corresponding page references, has also been given. In such cases an effort has been made to list the most common or the most exact Ge'ez term first.

Finally, the letter A., at the end of an entry, indicates that the following term is an Amharic rendering of the concept, also taken from the *Photo Offset Edition*. Amharic terminology is not shown where it simply repeats the Ge'ez, or is so circumlocutious as to be of little use in precise expression. Where the Amharic is taken from another point in the *Photo Offset Edition* than the point where the Ge'ez appears, the appropriate page is indicated in parentheses.

Where nouns, adjectives and other word forms can be regularly formed from the verb in Ge'ez and-or Amharic, often only the verb form has been given.

- Abolish (to a. or repeal a law) ሰወረ ፣ አብጠሰ ፣ 526-1, 276; A. አሳለረ ፣ (ጃረ)
 Abort (to make a woman a.) አደገዐ ፣ 555-1, 296; A. አስወረደ ፣
 Abrogate ሰወረ ፣ 10-3, 1; A. አሳለረ ፣ in the sense of to render a law obsolete.
 Accept (a. an inheritance) ተወክሏል ፣ 441-2, 224; A. ተቀበለ ፣
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