الباب 23: استصحاب الحال والعقود والشروط

Chapter 23: Presumption of Continuity; Contracts and Conditions

Ibn Ḥazm · Arabic–English parallel edition

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[الباب الثالث والعشرون في استصحاب الحال وبطلان جميع العقود والعهود والشروط إلا ما أوجبه منها قرآن أو سنة عن رسول الله صلى الله عليه وسلم ثابتة]

قال أبو محمد إذا ورد النص من القرآن أو السنة الثابتة في أمر ما، على حكم ما، ثم ادعى مدع أن ذلك الحكم قد انتقل أو بطل، من أجل أنه انتقل ذلك الشيء المحكوم فيه عن بعض أحواله، أو لتبدل زمانه، أو لتبدل مكانه، فعلى مدعي انتقال الحكم من أجل ذلك، أن يأتي ببرهان من نص قرآن أو سنة عن رسول الله صلى الله عليه وسلم ثابتة على أن ذلك الحكم قد انتقل أو بطل فإن جاء به صح قوله، وإن لم يأت به فهو مبطل فيما ادعى من ذلك، والفرض على الجميع الثبات على ما جاء به النص ما دام يبقى اسم ذلك الشيء المحكوم فيه عليه، لأنه اليقين، والنقلة دعوى وشرع لم يأذن الله تعالى به، فهما مردودان كاذبان حتى يأتي النص بهما، ويلزم من خالفنا في هذا أن يطلب كل حين تجديد الدليل على لزوم الصلاة والزكاة، وعلى صحة نكاحه مع امرأته، وعلى صحة ملكه لما يملك. ويقال للمخالف في هذا: أخبرنا أتحكم أنت بحكم آخر من عندك؟ أم تقف فلا تحكم بشيء أصلا، لا بالحكم الذي كنت عليه ولا بغيره؟ فإن قال: بل أقف. قيل له: وقوفك حكم لم يأتك به نص، وإبطالك حكم النص الذي قد أقررت بصحته خطأ عظيم. وكلاهما لا يجوز. وإن قال: بل أحدث حكما آخر، قيل له: أبطلت حكم الله تعالى، وشرعت شرعا لم يأذن به الله، وكلاهما من الطوام المهلكة. نعوذ بالله من كل ذلك. ويقال له: في كل حكم تدين به لعله قد نسخ هذا النص، أو لعل ههنا ما يخصه لم يبلغك. ويقال له: لعلك قد قتلت مسلما أو زنيت، فالحد أو القود عليك. فإن قال: أنا على البراءة حتى يصح علي شيء، ترك

[Chapter Twenty-Three: On the Presumption of Continuity of an Existing State, and the Invalidity of All Contracts, Covenants, and Conditions Except Those Made Binding by the Quran or an Established Sunnah from the Messenger of Allah ﷺ]

L1836

L1837–1847 Abu Muhammed said: When a text of the Quran or the established Sunnah lays down a particular ruling concerning a matter, and someone then claims that this ruling has changed or become invalid because the thing governed by it has undergone a change in some of its circumstances, or because its time has changed, or because its place has changed, the person claiming that the ruling has changed for that reason must produce a demonstration from a text of the Quran or an established Sunnah from the Messenger of Allah ﷺ that this ruling has changed or become invalid. If he produces it, his statement is sound; if he does not produce it, his claim concerning this is false. Everyone is obliged to adhere to what the text has prescribed for as long as the thing governed by the ruling continues to bear its name, because that is certainty. A change is a claim and a piece of legislation that Allah Most High has not authorized; both are rejected and false until a text establishes them. Anyone who disagrees with us on this is bound to seek fresh evidence at every moment for the binding obligation of prayer and almsgiving, for the validity of his marriage to his wife, and for the validity of his ownership of what he owns. The person who disagrees on this is to be asked: Tell us, do you issue another ruling of your own, or do you suspend judgment, issuing no ruling at all, neither the ruling you previously held nor any other? If he says, “Rather, I suspend judgment,” he is told: Your suspension of judgment is a ruling for which no text has come to you, and your invalidation of the ruling of the text whose validity you have already acknowledged is a grave error. Neither is permissible. If he says, “Rather, I introduce another ruling,” he is told: You have invalidated Allah Most High’s ruling and enacted legislation that Allah has not authorized. Both are among the ruinous enormities. We seek refuge in Allah from all of that. Concerning every ruling he professes as part of his religion, he is to be told: Perhaps this text has been abrogated, or perhaps there is something restricting its general scope has not

reached you." He is also told: "Perhaps you have killed a Muslim or committed unlawful sexual intercourse, so a prescribed punishment or retaliation is due against you." If he says, "I retain the presumption of innocence until something is established against me," he has abandoned his corrupt position, returned to the truth, and contradicted himself, since he had not followed this course in everything. Their position also requires them not to inherit from their deceased relatives, since perhaps those relatives apostatized, or perhaps gave their property away in charity, or perhaps incurred debts that exhaust it. They must therefore produce evidence that their deceased relatives were free of all these things at the time of death. The consequences incumbent upon them would exceed what the hides of a thousand camels could contain. Their position also requires them not to affirm the continuance of any prophet's prophethood until he produces, at every moment, a demonstration establishing his prophethood. As for us, we do not move from one ruling to another except on the basis of a demonstration. Thus we say to everyone who claims prophethood, such as Musaylimah, al-Aswad, and others: "We knew you as people who were not prophets, so your claims remain invalid until that which establishes them is verified." Likewise, we say to anyone who claims that someone's blood has become lawful to shed through apostasy or unlawful sexual intercourse: "We knew him to be innocent of all that, so he remains exempt from liability until the evidence for your claim is established." Likewise, we say this to anyone who claims that a particular upright person has become morally dissolute, that a particular morally dissolute person has become upright, that a particular living person has died, that a particular woman has been married by a particular man, that a particular man has divorced his wife, that a particular man's ownership of what he owned has ceased, or that a particular man has acquired ownership of what he did not own. The same applies to everything, on the basis that we remain as we were until the contrary is established. Some people resorted to these follies only in a few instances in which they had erred, and then defended their error with arguments that invalidate all reason and everything intelligible. Examples include their statement that when an impurity enters water, the water becomes impure, and that someone who experiences doubt after having certainty that he performed ablution must perform ablution, and

قوله الفاسد، ورجع إلى الحق، وناقض إذ لم يكن سلك في كل شيء هذا المسلك، ويلزمهم أيضا ألا يرثوا موتاهم، إذ لعلهم قد ارتدوا، أو لعلهم قد تصدقوا بها، أو لعلهم أدانوا ديونا تستغرقها، فيلزمهم إقامة البينة على براءة موتاهم في حين موتهم على كل ذلك، والذي يلزمهم يضيق عنه جلد ألف بعير، ويلزمهم ألا يقولوا بتمادي نبوة نبي، حتى يقيم كل حين البرهان على صحة نبوته. وأما نحن فلا ننتقل عن حكم إلى حكم آخر إلا ببرهان، وكذلك نقول لكل من ادعى النبوة كمسيلمة والأسود وغيرهما، عهدناكم غير أنبياء فأنتم على بطلان دعواكم حتى يصح ما يثبتها. وكذلك نقول لمن ادعى أن فلانا قد حل دمه بردة أو زنى: عهدناه بريئا من كل ذلك، فهو على السلامة حتى يصح الدليل على ما تدعيه. وكذلك نقول لمن ادعى أن فلانا العدل قد فسق، أو أن فلانا الفاسق قد تعدل، أو أن فلانا الحي قد مات، أو أن فلانة قد تزوجها فلان، أو أن فلانا طلق امرأته، أو أن فلانا قد زال ملكه عما كان يملك، أو أن فلانا قد ملك ما لم يكن يملكه، وهكذا كل شيء على أننا ما كنا عليه حتى يثبت خلافه. فإنما جاء قوم إلى هذه الحماقات في مواضع يسيرة أخطؤوا فيها، فنصروا خطأهم بما يبطل كل عقل وكل معقول، وذلك نحو قولهم: إن الماء إذا حلته نجاسة فقد تنجس، وإن من شك بعد يقينه بالوضوء فعليه الوضوء وأشباه هذا فقالوا: إن الماء الذي حكم الله بطهارته لم يكن حلته نجاسة. فقلنا لهم: وإن الرجل الذي حرم الله دمه، لم يكن شاب ولا حلق رأسه ولا عليه صفرة من مرض لم يكن فيه، فبدلوا حكمه لتبدل بعض أحواله. وقالوا: عليه ألا يصلي إلا بيقين طهارة لم يتلها شك. قلنا: فحرموا على من شك، أباع أمته أم لم يبعها، أن يطأها أو يملكها، لشكه في انتقال ملكه. وحدوا كل من شككتم أزنى أم لم يزن. وقد ذكرنا اعتراضهم بمسألة قول اليهود قد وافقتمونا على صحة نبوة موسى صلى الله عليه وسلم وبينا أننا لم ننتقل إلى الإقرار بنبوة محمد صلى الله عليه وسلم إلا ببراهين أظهر من براهين موسى لولاها لم نتبعه، ونحن لا ننكر الانتقال

من حكم أوجبه القرآن أو السنة، إذ جاء نص آخر ينقلنا عنه، إنما أنكرنا الانتقال عنه بغير نص أوجب النقل عنه، لكن لتبدل حال من أحواله أو لتبدل زمانه أو مكانه، فهذا هو الباطل الذي أنكرناه. وقال المالكيون: من شك أطلق امرأته أم لم يطلقها فلا شيء عليه، فأصابوا، ثم قالوا: فإن أيقن أنه طلقها ثم شك أو واحدة أو اثنتين أو ثلاثا، فهي طالق ثلاثا. وقالوا: من شك أطلق امرأة من نسائه أم لا فلا شيء عليه، فإن أيقن أنه طلق إحداهن، ثم لم يدر أيتهن هي فهن كلهن طلق، ففرقوا بين ما لا فرق بينه بدعوى عارية عن البرهان. فإن قالوا: إن ههنا هو على يقين من الطلاق، فقلنا: نعم، وعلى شك من الزيادة على طلاقها واحدة، والشك باطل كسائر ما قدمنا قبل، وكذلك ليس من نسائه امرأة يوقن أنه طلقها، فقد دخلتم فما أنكرناه على المخالفين من نقل الحكم بالظنون، بل وقعوا في الباطل المتيقن، وتحريم يقين الحلال من باقي نسائه اللواتي لم يطلقهن بلا شك، وفي تحليل الحرام المتيقن، إذ أباحوا الفروج اللواتي لم تطلق للناس، ولزمهم على هذا إذا وجدوا رجالا قد اختلط بينهم قاتل لا يعرفونه بعينه، أو زان محصن لا يعرفونه بعينه، أن يقتلوهم كلهم نعم وأن يحملوا السيف على أهل مدينة أيقنوا أن فيها قاتل عمد لا يعرفونه بعينه، وأن يقطعوا أيدي جميع أهلها إذا أيقنوا أن فيها سارقا لا يعرفونه بعينه، وأن يحرموا كل طعام بلد قد أيقنوا أن فيه طعاما حراما لا يعرفونه بعينه، وأن يرجموا كل محصنة ومحصن في الدنيا، لأن فيهم من قد زنى بلا شك، ولزمهم فيمن تصدق بشيء من ماله، ثم جهل مقداره أن يتصدق بماله كله ومثل هذا كثير جدا فظهر فساد هذا القول وبطلانه بيقين لا شك فيه. فإن قيل: وما الدليل على تمادي الحكم مع تبدل الأزمان والأمكنة؟ قلنا وبالله تعالى التوفيق: البرهان على ذلك صحة النقل من كل كافر ومؤمن على أن رسول الله صلى الله عليه وسلم أتانا بهذا الدين وذكر أنه آخر الأنبياء وخاتم الرسل، وأن دينه هذا لازم لكل حي، ولكل من يولد إلى القيامة في جميع الأرض، فصح أنه لا معنى لتبدل الزمان، ولا لتبدل المكان، ولا لتغير الأحوال، وأن ما ثبت فهو ثابت أبدا في كل

similar statements. They said: "The water whose purity Allah declared had not had an impurity enter it." We said to them: "Likewise, the man whose blood Allah forbade you to shed had not gone grey, had not shaved his head, and had not acquired a yellow pallor from an illness he had not previously had. So change the ruling concerning him because some of his circumstances have changed!" They said: "He must not pray except with certainty of ritual purity that has not been followed by doubt." We said: "Then forbid someone who doubts whether he has sold his slave woman or has not sold her to have intercourse with her or to own her, because he doubts whether his ownership has passed away. And inflict the prescribed punishment on everyone about whom you are uncertain whether he has committed unlawful sexual intercourse or has not." We have already mentioned their objection based on the Jews' statement: "You have agreed with us on the validity of the prophethood of Moses, may Allah bless him and grant him peace ﷺ," and we explained that we did not move to acknowledging the prophethood of Muhammed, may Allah bless him and grant him peace ﷺ, except through demonstrations more evident than the demonstrations of Moses, without which we would not follow him. We do not deny moving away from a ruling imposed by the Quran or the Sunnah when another text comes that moves us away from it. What we deny is moving away from it without a text requiring that move, merely because one of its circumstances changes, or because its time or place changes. This is the falsehood we have rejected. The Malikis said: "Someone who doubts whether he has divorced his wife or has not divorced her incurs no obligation." In this they were correct. Then they said: "But if he is certain that he divorced her, and then doubts whether it was once, twice, or three times, she is divorced three times." They also said: "Someone who doubts whether he has divorced one of his wives or not incurs no obligation. But if he is certain that he divorced one of them and then does not know which one she is, they are all divorced." Thus they distinguished between things between which there is no distinction, on the strength of an assertion devoid of demonstration. If they say, "Here he is certain of the divorce," we say: "Yes, and he doubts anything beyond divorcing her once, and doubt is invalid, like all the other instances we set out previously. Likewise, there is no individual wife of his whom he is certain he divorced. You have therefore

entered into what we condemned in our opponents: changing a ruling on the basis of conjectures." Indeed, they have fallen into certain falsehood, forbidding what is certainly lawful with respect to his remaining wives, whom he unquestionably did not divorce, and permitting what is certainly forbidden, since they have made sexual access to women who were not divorced lawful to other men. On this basis, if they find a group of men among whom there is a killer whom they cannot individually identify, or a person possessing the legal status of marital protection who has committed unlawful sexual intercourse and whom they cannot individually identify, their position requires them to kill them all. Indeed, it requires them to take the sword to the inhabitants of a city in which they are certain there is an intentional killer whom they cannot individually identify; to cut off the hands of all its inhabitants if they are certain that there is a thief among them whom they cannot individually identify; to forbid all the food of a town in which they are certain there is forbidden food that they cannot individually identify; and to stone every woman and man in the world possessing the legal status of marital protection, because among them there are undoubtedly people who have committed unlawful sexual intercourse. Their position also requires someone who has given some of his property in charity and then does not know its amount to give all his property in charity. There are very many similar examples. Thus the corruption and invalidity of this position have become evident with a certainty admitting no doubt. If it is asked, "What is the evidence that a ruling continues despite changes of times and places?" we say—and through Allah Most High comes success— the demonstration of this is the sound transmission, from every unbeliever and believer, that the Messenger of Allah, may Allah bless him and grant him peace ﷺ, brought us this religion and stated that he was the last of the prophets and the seal of the messengers, and that this religion of his is binding on every living person and everyone born until the Resurrection throughout the earth. It is therefore established that a change of time, a change of place, or a change of circumstances has no significance, and that whatever has been established remains established forever, at every time, in every place, and under every circumstance, until a text comes that removes it from its ruling at another time, in another place, or under another circumstance. Likewise, if a text

زمان وفي كل مكان، وعلى كل حال، حتى يأتي نص ينقله عن حكمه في زمان آخر، أو مكان آخر، أو حال أخرى. وكذلك إن جاء نص بوجوب حكم في زمان ما، أو في مكان، أو في حال ما وبين لنا ذلك في النص، وجب ألا يتعدى النص. فلا يلزم ذلك الحكم حينئذ في غير ذلك الزمان، ولا في غير ذلك المكان ولا في غير تلك الحال قال تعالى {يأيها لنبي إذا طلقتم لنسآء فطلقوهن لعدتهن وأحصوا لعدة وتقوا لله ربكم لا تخرجوهن من بيوتهن ولا يخرجن إلا أن يأتين بفاحشة مبينة وتلك حدود الله ومن يتعد حدود الله فقد ظلم نفسه لا تدرى لعل لله يحدث بعد ذلك أمرا} وأمر رسول الله صلى الله عليه وسلم من لم يدرك صلى أن يصلي حتى يكون على يقين من التمام، وعلى شك من الزيادة، لأنه على يقين من أنه لم يصل ما لزمه، فعليه أن يصليه وهذا هو نص قولنا. وأما إذا تبدل الاسم فقد تبدل الحكم بلا شك، كالخمر يتخلل أو يخلل لأنه إنما حرمت الخمر، والخل ليس خمرا، وكالعذرة تصير ترابا، فقد سقط حكمها، وكلبن الخنزير والخمر والميتات يأكلها الدجاج ويرتضعه الجدي، فقد بطل التحريم إذا انتقل اسم الميتة واللبن والخمر، ومن حرم ما لا يقع عليه الاسم الذي جاء به التحريم، فلا فرق، بينه وبين من أحل بعض ما وقع عليه الاسم الذي جاء به التحريم وكلاهما متعد لحدود الله تعالى {يأيها لنبي إذا طلقتم لنسآء فطلقوهن لعدتهن وأحصوا لعدة وتقوا لله ربكم لا تخرجوهن من بيوتهن ولا يخرجن إلا أن يأتين بفاحشة مبينة وتلك حدود الله ومن يتعد حدود الله فقد ظلم نفسه لا تدرى لعل لله يحدث بعد ذلك أمرا} وهذا حكم جامع لكل ما اختلف فيه، فمن التزمه فقد فاز ومن خالفه فقد هلك وأهلك، وبالله تعالى التوفيق. وكل احتياط أدى إلى الزيادة في الدين ما لم يأذن به الله تعالى، أو إلى النقص منه أو إلى تبديل شيء منه فليس احتياطا، ولا هو خيرا، بل هو هلكة وضلال وشرع لم يأذن به الله تعالى والاحتياط كله لزوم القرآن والسنة.

comes imposing a ruling at a particular time, in a particular place, or under a particular circumstance, and this is made clear to us in the text, the text must not be exceeded. That ruling is then not binding outside that time, outside that place, or outside that circumstance. The Most High said: "O Prophet, when you divorce women, divorce them for their waiting period, and count the waiting period, and fear Allah, your Lord. Do not expel them from their homes, nor shall they leave, unless they commit a manifest indecency. Those are the limits of Allah, and whoever transgresses the limits of Allah has wronged himself. You do not know: perhaps Allah will bring about some matter after that." The Messenger of Allah, may Allah bless him and grant him peace ﷺ, commanded someone who had not ascertained [how much] he had prayed to continue praying until he was certain of completion and doubtful of any excess, because he is certain that he has not prayed what was obligatory upon him, and must therefore pray it. This is precisely our position. But when the name changes, the ruling has unquestionably changed, as when wine turns into vinegar or is made into vinegar, because it was wine alone that was forbidden, and vinegar is not wine. Likewise, when excrement becomes earth, its ruling ceases to apply. The same applies to the milk of pigs and donkeys, and to carrion, which chickens eat, and to milk which a young goat suckles: the prohibition ceases when the designation of carrion, milk, or wine no longer applies. Whoever forbids something to which the name specified in the prohibition does not apply is no different from someone who permits some of that to which the name specified in the prohibition does apply. Both transgress the limits of Allah Most High: "O Prophet, when you divorce women, divorce them for their waiting period, and count the waiting period, and fear Allah, your Lord. Do not expel them from their homes, nor shall they leave, unless they commit a manifest indecency. Those are the limits of Allah, and whoever transgresses the limits of Allah has wronged himself. You do not know: perhaps Allah will bring about some matter after that." This is a ruling encompassing everything about which there is disagreement. Whoever adheres to it has succeeded; whoever opposes it has perished and caused others to perish. Through Allah Most High comes success. Any precaution that leads to adding to the religion something Allah Most High has not authorized, subtracting from it, or alter-

وأما العقود والعهود والشروط والوعد، فإن أصل الاختلاف فيها على قولين لا يخرج الحق عن أحدهما: وما عداهما فتخليط ومناقضات لا يستقر لقائلها قول على حقيقة، فأحد القولين المذكورين: إما أنها كلها لازم حق إلا ما أبطله منها نص.

ing anything in it is neither precaution nor good. Rather, it is destruction, error, and legislation that Allah Most High has not authorized. Precaution consists entirely in adhering to the Quran and the Sunnah. As for contracts, covenants, stipulations, and promises, the fundamental disagreement concerning them rests upon two positions, one of which must contain the truth. Anything beyond them is confusion and contradictions whose proponents cannot maintain any position on a sound basis. One of the two positions mentioned is that all of them are binding and valid, except those invalidated by a text[1][2][3][4][5]

L1848–1850 The second is that they are all invalid and nonbinding, except those that a text makes obligatory. As for those that a text permits, among the arguments of those who said that they are all valid and binding except those that a text invalidates was their saying: Allah, mighty and majestic, said: {And do not

والثاني: أنها كلها باطل غير لازم إلا ما أوجبه منها نص، أما ما أباحه منها نص، فكان من حجة من قال: إنها كلها حق لازم إلا ما أبطله منها نص أن قال قال الله عز وجل {ولا تقربوا مال ليتيم إلا بلتي هي أحسن حتى يبلغ أشده وأوفوا بالعهد إن لعهد كان مسؤولا} وقال عز وجل {هو لذي بعث في لأميين رسولا منهم يتلو عليهم آياته ويزكيهم ويعلمهم لكتاب ولحكمة وإن كانوا من قبل لفي ضلال مبين * وآخرين منهم لما يلحقوا بهم وهو لعزيز لحكيم} وقال عز وجل {والذين هم لأماناتهم وعهدهم راعون} وقال تعالى {إن لله لا يستحى أن يضرب مثلا ما بعوضة فما فوقها فأما لذين آمنوا فيعلمون أنه لحق من ربهم وأما لذين كفروا فيقولون ماذآ أراد لله بهذا مثلا يضل به كثيرا ويهدي به كثيرا وما يضل به إلا لفاسقين * لذين ينقضون عهد لله من بعد ميثاقه ويقطعون مآ أمر لله به أن يوصل ويفسدون في لأرض أولئك هم لخاسرون} وقال تعالى {أوكلما عاهدوا عهدا نبذه فريق منهم بل أكثرهم لا يؤمنون} وقال تعالى {ليس لبر أن تولوا وجوهكم قبل لمشرق ولمغرب ولكن لبر من آمن بلله وليوم لآخر ولملائكة ولكتاب ولنبيين وآتى لمال على حبه ذوي لقربى وليتامى ولمساكين وبن لسبيل ولسآئلين وفي لرقاب وأقام لصلاة وآتى لزكاة ولموفون بعهدهم إذا عاهدوا ولصابرين في لبأسآء ولضراء وحين لبأس أولئك لذين صدقوآ وأولئك هم لمتقون} وقال تعالى {بلى من أوفى بعهده واتقى فإن الله يحب المتقين * إن الذين يشترون بعهد

[1] **Translator's note (L1842):** The supplied أو واحدة in the question about the number of divorces is syntactically awkward. The translation conveys the alternatives indicated by the surrounding wording without treating this as a separate substantive claim.

[2] **Translator's note (L1843):** The supplied فقد دخلتم فما أنكرناه is syntactically irregular; the translation understands it as entering into the practice the author condemned, while preserving the shift to direct address. "Possessing the legal status of marital protection" renders muḥṣan/muḥṣanah, a technical legal status relevant here to the punishment for unlawful sexual intercourse.

[3] **Translator's note (L1845):** The Quran quotation, continuing into the next unit, is Quran 65:1. Its transcription repeatedly omits initial alifs in forms such as لنبي, لنسآء, and لعدة; the translation follows their identifiable lexical readings.

[4] **Translator's note (L1846):** The supplied من لم يدرك صلى is grammatically defective and does not clearly state what the worshipper has failed to ascertain. "[How much]" makes explicit the interpretation supported by the following discussion of completing the prayer. The syntax of the example involving milk, carrion, chickens, and a suckling young goat is compressed and awkward. The translation takes the chickens as eating the listed substances and the young goat as suckling the milk; the Arabic does not clearly distribute all the objects between the two actions. Both occurrences of Quran 65:1 contain لله where the standard wording has الله in "perhaps Allah will bring about." The translation follows the evident intended reference to Allah and records the transcription discrepancy here. The repeated quotation also contains the omitted initial alifs noted in the preceding unit.

[5] **Qur'an references (L1837):** Qur'an 65:1 (At-Talaq).

approach the orphan's property except in the manner that is best, until he reaches his full strength. And fulfill the covenant: surely the covenant will be asked about.} And He, mighty and majestic, said: {He is the One who sent among the unlettered a messenger from among themselves, reciting His signs to them, purifying them, and teaching them the Book and wisdom, although previously they were in manifest error; * and others among them who have not yet joined them. And He is the Mighty, the Wise.} And He, mighty and majestic, said: {And those who are mindful of their trusts and their covenant.} And He, exalted, said: {Indeed, Allah is not ashamed to give as an example a mosquito or anything above it. As for those who believe, they know that it is the truth from their Lord. As for those who disbelieve, they say: "What did Allah intend by this as an example?" Through it He leads many astray, and through it He guides many; and through it He leads none astray except the defiantly disobedient, * who break Allah's covenant after its confirmation, sever what Allah has commanded to be joined, and spread corruption on earth. Those are the losers.} And He, exalted, said: {Is it that whenever they make a covenant, a group of them casts it aside? Rather, most of them do not believe.} And He, exalted, said: {Righteousness is not that you turn your faces toward the east and the west. Rather, righteousness is one who believes in Allah, the Last Day, the angels, the Book, and the prophets; gives wealth, despite his love for it, to relatives, orphans, the needy, the wayfarer, those who ask, and for freeing people from bondage; establishes prayer and gives the obligatory alms; and those who fulfill their covenant when they make a covenant, and those who are patient in hardship, adversity, and the time of battle. Those are the ones who have been truthful, and those are the Allah-fearing.} And He, exalted, said: {Yes indeed: whoever fulfills his covenant and fears Allah—surely Allah loves the Allah-fearing. * Indeed, those who exchange Allah's covenant and their oaths for a small price will have no share in the Hereafter. Allah will neither speak to them nor look at them on the Day of Resurrection, nor will He purify them; and theirs will be a painful punishment.} And He, exalted, said: {Indeed, those who pledge allegiance to you pledge allegiance only to Allah. Allah's hand is above their hands. Whoever breaks his pledge breaks it only to his own detriment, and whoever fulfills what he has covenanted with Allah to do, He will grant him a great

لله وأيمانهم ثمنا قليلا أولئك لا خلاق لهم في لآخرة ولا يكلمهم لله ولا ينظر إليهم يوم لقيامة ولا يزكيهم ولهم عذاب أليم} وقال تعالى {إن لذين يبايعونك إنما يبايعون لله يد لله فوق أيديهم فمن نكث فإنما ينكث على نفسه ومن أوفى بما عاهد عليه لله فسيؤتيه أجرا عظيما} وقال تعالى {يا أيها لذين آمنوا أوفوا بلعقود أحلت لكم بهيمة لأنعام إلا ما يتلى عليكم غير محلي لصيد وأنتم حرم إن لله يحكم ما يريد} وقال تعالى {وإما تخافن من قوم خيانة فنبذ إليهم على سوآء إن لله لا يحب لخائنين}

reward.} And He, exalted, said: {O you who believe, fulfill your contracts. Livestock animals have been made lawful for you, except what is recited to you, without treating game as lawful while you are in the state of pilgrimage consecration. Indeed, Allah rules as He wills.} And He, exalted, said: {And if you fear treachery from a people, cast their covenant back to them on equal terms. Indeed, Allah does not love the treacherous.}[67]

L1851–1859 And He, mighty and majestic, said: {Those who fulfill Allah's covenant and do not break the solemn compact.} And He, exalted, said: {And do not exchange Allah's covenant for a small price. What is with Allah is better for you, if you but knew.} And He, exalted, said: {And do not approach the orphan's property except in the manner that is best, until he reaches his full strength. And give full measure and weight with justice. We burden no soul beyond its capacity. And when you speak, be just, even if it concerns a relative. And fulfill Allah's covenant. This He has enjoined upon you, so that you may take heed.} And He, exalted, said: {They fulfill their vows and fear a day whose evil is widespread.} And He, exalted, said: {Whatever expenditure you make or vow you vow, Allah surely knows it; and the wrongdoers have no helpers.} And He, mighty and majestic, said: {And among them are those who covenanted with Allah: "If He gives us of His bounty, we will surely give alms and surely be among the righteous." * But when He gave them of His bounty, they were miserly with it and turned away in aversion. * So He caused hypocrisy to follow in their hearts until the day they meet Him, because they failed Allah in what they had promised Him and because they used to lie.} And He, exalted, said: {And mention Ishmael in the Book. He was true to his promise, and he was a messenger and a prophet.} They also cited what ʿAbd Allah ibn Yusuf related to us: Ahmad ibn Fath related to us:

[6] **Translator's note (L1848):** The clause beginning "As for those that a text permits" has no clear completion in the supplied wording. Its awkward transition into the account of the opposing argument has been retained.

[7] **Qur'an references (L1848):** Qur'an 17:34 (Al-Isra); Qur'an 62:2 (Al-Jumu'ah); Qur'an 3:164 (Ali 'Imran); Qur'an 62:3 (Al-Jumu'ah); Qur'an 23:8 (Al-Mu'minun); Qur'an 70:32 (Al-Ma'arij); Qur'an 2:26 (Al-Baqarah); Qur'an 2:100 (Al-Baqarah); Qur'an 3:76 (Ali 'Imran); Qur'an 3:77 (Ali 'Imran); Qur'an 48:10 (Al-Fath); Qur'an 5:1 (Al-Ma'idah); Qur'an 8:58 (Al-Anfal).

وقال عز وجل {لذين يوفون بعهد لله ولا ينقضون لميثاق} وقال تعالى {ولا تشتروا بعهد لله ثمنا قليلا إنما عند لله هو خير لكم إن كنتم تعلمون} وقال تعالى {ولا تقربوا مال ليتيم إلا بلتي هي أحسن حتى يبلغ أشده وأوفوا لكيل ولميزان بلقسط لا نكلف نفسا إلا وسعها وإذا قلتم فعدلوا ولو كان ذا قربى وبعهد لله أوفوا ذلكم وصاكم به لعلكم تذكرون} وقال تعالى {يوفون بلنذر ويخافون يوما كان شره مستطيرا} وقال تعالى {ومآ أنفقتم من نفقة أو نذرتم من نذر فإن لله يعلمه وما للظالمين من أنصار} وقال عز وجل {ومنهم من عاهد لله لئن آتانا من فضله لنصدقن ولنكونن من لصالحين * فلمآ آتاهم من فضله بخلوا به وتولوا وهم معرضون * فأعقبهم نفاقا في قلوبهم إلى يوم يلقونه بمآ أخلفوا لله ما وعدوه وبما كانوا يكذبون} وقال تعالى {وذكر في لكتاب إسماعيل إنه كان صادق لوعد وكان رسولا نبيا} وذكروا ما حدثناه عبد الله بن يوسف، نا أحمد بن فتح، نا عبد الوهاب بن عيسى، نا أحمد بن محمد، نا أحمد بن علي، ثنا مسلم بن الحجاج، ني زهير بن حرب، ثنا وكيع، نا سفيان هو الثوري، عن الأعمش، عن عبد الله بن مرة، عن مسروق عن عبد الله بن عمرو قال قال رسول الله صلى الله عليه وسلم أربع من كن فيه كان منافقا خالصا ومن كانت فيه خصلة منهن كانت فيه خصلة من النفاق حتى يدعها: إذا حدث كذب، وإذا عاهد غدر، وإذا وعد أخلف، وإذا خاصم فجر وبه إلى مسلم: نا عبد الأعلى بن حماد، ثنا حماد بن سلمة، عن داود بن أبي هند عن سعيد بن المسيب عن أبي هريرة عن النبي صلى الله عليه وسلم قال

ʿAbd al-Wahhab ibn ʿIsa related to us: Ahmad ibn Muhammed related to us: Ahmad ibn ʿAli related to us: Muslim ibn al-Hajjaj related to us: Zuhayr ibn Harb related to me: Wakiʿ related to us: Sufyan—that is, al-Thawri—related to us, from al-Aʿmash, from ʿAbd Allah ibn Murrah, from Masruq, from ʿAbd Allah ibn ʿAmr, who said: The Messenger of Allah, may Allah bless him and grant him peace, said: "There are four qualities: whoever possesses them is a pure hypocrite, and whoever possesses one of them possesses a quality of hypocrisy until he abandons it: when he speaks, he lies; when he makes a covenant, he betrays it; when he promises, he breaks his promise; and when he disputes, he acts wickedly." Through the same chain to Muslim: ʿAbd al-Aʿla ibn Hammad related to us: Hammad ibn Salamah related to us, from Dawud ibn Abi Hind, from Saʿid ibn al-Musayyab, from Abu Hurayrah, from the Prophet ﷺ, who said: "Among the signs of the hypocrite are three, even if he prays, even if he fasts, and claims that he is a Muslim: when he speaks, he lies; when he promises, he breaks his promise; and when he is entrusted with something, he betrays the trust." Through the same chain to Muslim: Muhammed ibn ʿAbd Allah ibn Numayr related to us: My father related to us: ʿUbayd Allah ibn ʿUmar related to us, from Nafiʿ, from Ibn ʿUmar, who said: The Messenger of Allah ﷺ said: "When Allah gathers the first and the last on the Day of Resurrection, a banner will be raised for every traitor, and it will be said: 'This is the treachery of so-and-so, son of so-and-so.'" Through the same chain to Muslim: Muhammed ibn al-Muthanna related to us: ʿAbd al-Rahman ibn Mahdi related to us: Shuʿbah related to us, from Khulayd, from Abu Nadrah, from Abu Saʿid, from the Prophet ﷺ, who said: "Every traitor will have a banner at his backside on the Day of Resurrection." Through the same chain to Muslim: Zuhayr ibn Harb related to me: ʿAbd al-Samad ibn ʿAbd al-Warith related to us: al-Mustamirr ibn al-Rayyan related to us: Abu Nadrah related to us, from Abu Saʿid, who said: The Messenger of Allah ﷺ said: "Every traitor will have a banner on the Day of Resurrection, raised for him in proportion to his treachery. Take heed: no traitor is greater in treachery than one who has command over the public." Through the same chain to Muslim: ʿAbd Allah ibn Hashim related to me: ʿAbd al-Rahman ibn Mahdi related to me: Sufyan—that is, al-Thawri—related to us, from ʿAlqamah ibn Marthad, from Sulayman ibn Buraydah, from his father, who

من علامات المنافق ثلاث وإن صلى وإن صام وزعم أنه مسلم: إذا حدث كذب، وإذا وعد أخلف، وإذا ائتمن خان وبه إلى مسلم: ثنا محمد بن عبد الله بن نمير، ثنا أبي، ثنا عبيد الله بن عمر عن نافع عن ابن عمر قال قال رسول الله صلى الله عليه وسلم إذا جمع الله الأولين والآخرين يوم القيامة رفع لكل غادر لواء، فقيل هذه غدرة فلان ابن فلان. وبه إلى مسلم: ثنا محمد بن المثنى، ثنا عبد الرحمن بن مهدي، ثنا شعبة عن خليد عن أبي نضرة عن أبي سعيد عن النبي صلى الله عليه وسلم قال لكل غادر لواء عند استه يوم القيامة وبه إلى مسلم: ني زهير بن حرب، ثنا عبد الصمد بن عبد الوارث، ثنا المستمر بن الريان، ثنا أبو نضرة عن أبي سعيد قال قال رسول الله صلى الله عليه وسلم لكل غادر لواء يوم القيامة يرفع له بقدر غدره، ألا ولا غادر أعظم غدرا من أمر عامة وبه إلى مسلم، حدثني عبد الله بن هاشم، ني عبد الرحمن بن مهدي، ثنا سفيان هو الثوري، عن علقمة بن مرثد، عن سليمان بن بريدة عن أبيه قال كان رسول الله صلى الله عليه وسلم إذا أمر أميرا على جيش أو سرية أوصاه في خاصته بتقوى الله ومن معه من المسلمين خيرا، ثم قال: اغزوا باسم الله في سبيل الله، قاتلوا من كفر بالله اغزوا ولا تغفلوا ولا تغدروا وذكر باقي الحديث. وبه إلى مسلم: نا محمد بن المثنى، نا يحيى بن سعيد القطان، عن عبد الحميد بن جعفر، عن يزيد بن أبي حبيب، عن مرثد بن عبد الله اليزني عن عقبة بن عامر قال قال رسول الله صلى الله عليه وسلم إن أحق الشروط أن توفوا به ما استحللتم به الفروج. حدثنا عبد الله بن ربيع، ثنا محمد بن إسحاق بن السليم، نا ابن الأعرابي، نا أبو داود، نا أحمد بن صالح، نا عبد الله بن وهب، أخبرني عمرو بن الحارث، عن بكير بن الأشج، عن الحسن بن علي بن أبي رافع أن أبا رافع أخبره قال بعثتني قريش إلى رسول الله صلى الله عليه وسلم فلما رأيت رسول الله صلى الله عليه وسلم ألقي في قلبي الإسلام فقلت يا رسول

said: Whenever the Messenger of Allah ﷺ appointed a commander over an army or a raiding detachment, he would enjoin him personally to fear Allah and to treat the Muslims with him well. Then he said: “Go forth to battle in the name of Allah, in the path of Allah. Fight those who disbelieve in Allah. Go forth to battle, do not be heedless, and do not act treacherously.” And he mentioned the remainder of the hadith. Through the same chain to Muslim: Muhammed ibn al-Muthanna related to us: Yahya ibn Saʿid al-Qattan related to us, from ʿAbd al-Hamid ibn Jaʿfar, from Yazid ibn Abi Habib, from Marthad ibn ʿAbd Allah al-Yazani, from ʿUqbah ibn ʿAmir, who said: The Messenger of Allah ﷺ said: “The conditions most deserving of your fulfillment are those by which you have made sexual relations lawful.” ʿAbd Allah ibn Rabiʿ related to us: Muhammed ibn Ishaq ibn al-Salim related to us: Ibn al-Aʿrabi related to us: Abu Dawud related to us: Ahmad ibn Salih related to us: ʿAbd Allah ibn Wahb related to us: ʿAmr ibn al-Harith informed me, from Bukayr ibn al-Ashajj, from al-Hasan ibn ʿAli ibn Abi Rafiʿ, that Abu Rafiʿ informed him, saying: Quraysh sent me to the Messenger of Allah ﷺ. When I saw the Messenger of Allah ﷺ, Islam was cast into my heart, so I said: “O Messenger of Allah, by Allah, I will never return to them.” The Messenger of Allah ﷺ said: “I do not betray a covenant, nor do I detain messengers. But return to them; then, if what is in your heart now is still in your heart, come back.” He said: So I went, then came to the Prophet ﷺ and embraced Islam. ʿAbd al-Rahman ibn ʿAbd Allah al-Hamdani related to us: Ibrahim ibn Ahmad al-Balkhi related to us: al-Firabri related to us: al-Bukhari related to us: Ishaq related to us: Yaʿqub related to us: Ibn Shihab’s nephew related to us, from his uncle: ʿUrwah, son of al-Zubayr, that he heard Marwan and al-Miswar ibn Makhramah, both of whom related the account of the Prophet ﷺ. It includes the following: When the Messenger of Allah ﷺ concluded a written agreement with Suhayl ibn ʿAmr on the day of al-Hudaybiyyah concerning the stipulated period, among the conditions Suhayl ibn ʿAmr imposed was: “No one from among us shall come to you without your returning him to us and leaving us free to deal with him.” Suhayl refused to conclude an agreement with the Messenger of Allah ﷺ on any other terms. The Messenger of Allah ﷺ therefore returned Abu Jandal ibn Abi Sahl that day to his father, Suhayl ibn ʿAmr. Throughout that period,

الله إني والله لا أرجع إليهم أبدا فقال رسول الله صلى الله عليه وسلم إني لا أخيس بالعهد ولا أحبس البرد ولكن ارجع إليهم فإن كان في نفسك الذي في نفسك الآن فارجع قال فذهبت ثم أتيت النبي صلى الله عليه وسلم فأسلمت حدثنا عبد الرحمن بن عبد الله الهمداني، نا إبراهيم بن أحمد البلخي، نا الفربري، ثنا البخاري، نا إسحاق، نا يعقوب، نا ابن أخي ابن شهاب، عن عمه، أخبرني عروة بن الزبير، أنه سمع مروان والمسور بن مخرمة فذكرا جميعا خبر النبي صلى الله عليه وسلم وفيه إنه لما كاتب رسول الله صلى الله عليه وسلم سهيل بن عمرو يوم الحديبية على قضية المدة كان فيما اشترط سهيل بن عمرو: أنه لا يأتيك منا أحد إلا رددته إلينا، وخليت بيننا وبينه وأبى سهيل أن يقاضي رسول الله صلى الله عليه وسلم إلا على ذلك فرد رسول الله صلى الله عليه وسلم أبا جندل بن أبي سهل يومئذ إلى أبيه سهيل بن عمرو ولم يأت رسول الله صلى الله عليه وسلم أحد من الرجال إلا رده في تلك المدة وإن كان مسلما. حدثنا عبد الله بن ربيع، ثنا محمد بن إسحاق، نا ابن الأعرابي، نا أبو داود، حدثنا محمد بن عبيد، أن محمد بن ثور حدثهم، عن معمر، عن الزهري، عن عروة بن الزبير عن المسور بن مخرمة قال خرج النبي صلى الله عليه وسلم زمن الحديبية فذكر الحديث وفيه ثم رجع إلى المدينة فجاءه أبو بصير برجل من قريش، يعني أرسلوا في طلبه، فدفعه إلى رجلين فخرجا به، فلما بلغا ذا الحليفة نزلوا يأكون من تمر لهم، فقال أبو بصير لأحد الرجلين: والله إني لأرى سيفك يا فلان جيدا، فاستله الآخر فقال أجل قد جربت به فقال أبو بصير: أرني أنظر إليه فأمسكه منه، فضربه حتى برد، وفر الآخر حتى أتى المدينة فدخل المسجد يعدو فقال النبي صلى الله عليه وسلم لقد رأى هذا ذعرا فقال قتل والله صاحبي وإني لمقتول، فجاء أبو بصير فقال: قد أوفى الله ذمتك قد رددتني إليهم

no man came to the Messenger of Allah ﷺ without his returning him, even if he was a Muslim.

ʿAbd Allah ibn Rabiʿ narrated to us: Muhammed ibn Ishaq narrated to us: Ibn al-Aʿrabi narrated to us: Abu Dawud narrated to us: Muhammed ibn ʿUbayd narrated to us that Muhammed ibn Thawr narrated to them, from Maʿmar, from al-Zuhri, from ʿUrwah ibn al-Zubayr, from al-Miswar ibn Makhramah, who said: The Prophet ﷺ set out at the time of al-Hudaybiyyah. He then related the report, which includes: Then he returned to Medina, and Abu Basir came to him with a man from Quraysh—meaning that they had sent in pursuit of him. He handed him over to two men, who took him away. When they reached Dhu al-Hulayfah, they dismounted to eat some dates they had. Abu Basir said to one of the two men: "By Allah, I see that your sword, so-and-so, is a fine one." The other man drew it and said: "Indeed; I have put it to the test." Abu Basir said: "Show it to me so that I may look at it." He took hold of it from him and struck him until he lay cold. The other fled until he reached Medina and entered the mosque running. The Prophet ﷺ said: "This man has certainly witnessed something terrifying." He said: "By Allah, my companion has been killed, and I shall certainly be killed!" Then Abu Basir came and said: "Allah has fulfilled your obligation: you returned me to them, and then Allah delivered me from them." The Messenger of Allah ﷺ said to him: "Woe to his mother! A kindler of war, if only he had someone with him!" When he heard that, he knew that he would return him to them, so he departed until he reached the seashore. And Abu Jandal escaped and joined Abu Basir, until a band of them had gathered.

ʿAbd Allah ibn Yusuf narrated to us: Ahmad ibn al-Fath narrated to us: ʿAbd al-Wahhab narrated to us: Ahmad ibn Muhammed narrated to us: Ahmad ibn ʿAli narrated to us: Muslim ibn al-Hajjaj narrated to us: Abu Bakr ibn Abi Shaybah narrated to us: Abu Usamah narrated to us, from al-Walid ibn Jumayʿ: Abu al-Tufayl narrated to us: Hudhayfah ibn al-Yaman narrated to us, saying: "Nothing prevented me from taking part at Badr except that my father Husayl and I set out, and the unbelievers of Quraysh seized us. They said: 'You intend to join Muhammed.' We said: 'We do not intend to join him; we intend only to go to Medina.' They exacted from us a pledge

ثم قد نجاني الله منهم فقال له رسول الله صلى الله عليه وسلم ويل أمه مسعر حرب لو كان له أحد فلما سمع ذلك عرف أنه سيرده إليهم، فخرج حتى أتى سيف البحر، وتفلت أبو جندل فلحق بأبي بصير، حتى اجتمعت منهم عصابة. حدثنا عبد الله بن يوسف، نا أحمد بن الفتح، نا عبد الوهاب، نا أحمد بن محمد، نا أحمد بن علي، نا مسلم بن الحجاج، نا أبو بكر بن أبي شيبة، نا أبو أسامة عن الوليد بن جميع، نا أبو الطفيل، نا حذيفة بن اليمان قال: ما منعني أن أشهد بدرا إلا أني خرجت أنا وأبي حسيل، فأخذنا كفار قريش، فقالوا: إنكم تريدون محمدا، فقلنا: ما نريده، ما نريد إلا المدينة، فأخذوا منا عهد الله وميثاقه لننصرفن إلى المدينة ولا نقاتل معه فأتينا رسول الله صلى الله عليه وسلم فأخبرناه الخبر فقال انصرفا نفي لهم بعهدهم ونستعين الله عليهم.

and covenant before Allah that we would go to Medina and would not fight alongside him. We came to the Messenger of Allah ﷺ and told him what had happened. He said: ‘Go on your way. We shall fulfill their covenant with them and seek Allah’s help against them.’”[8][9][10][11]

L1860–1863 Muhammed ibn Saʿid narrated to me: Nabat narrated to us: Ahmad ibn ʿAwn Allah narrated to us: Qasim ibn Asbagh narrated to us: Muhammed ibn ʿAbd al-Salam al-Khushani narrated to us: Muhammed ibn Bashshar narrated to us: Muhammed ibn Jaʿfar narrated to us: Shuʿbah narrated to us, from Abu Ishaq al-Sabiʿi and al-Hakam ibn ʿUtaybah, that the polytheists took Hudhayfah ibn al-Husayl ibn al-Yaman and his father captive and exacted an undertaking from them that they would not take part at Badr. They therefore asked the Prophet ﷺ and he permitted them not to take part.

ʿAbd Allah ibn Rabiʿ narrated to us: ʿUmar ibn ʿAbd al-Malik al-Khawlani narrated to us: Muhammed ibn Bakr narrated to us: Sulayman ibn al-Ashʿath narrated to us: Qabisah narrated to us: al-Layth narrated to us, from Muhammed ibn ʿAjlan, that a man from among the clients of ʿAbd Allah ibn ʿAmir ibn Rabiʿ al-ʿAdawi narrated to him, from ʿAbd Allah ibn ʿAmir, that he said: “My mother called me one day while the Messenger of

حدثني محمد بن سعيد، نا نبات، ثنا أحمد بن عون الله، نا قاسم بن أصبغ، نا محمد ابن عبد السلام الخشني، نا محمد بن بشار، نا محمد بن جعفر، نا شعبة عن أبي إسحاق السبيعي، والحكم بن عتيبة: أن حذيفة بن الحسيل بن اليمان وأباه، أسرهما المشركون، فأخذوا عليهما ألا يشهدا بدرا فسألا النبي صلى الله عليه وسلم فرخص لهما ألا يشهدا حدثنا عبد الله بن ربيع، نا عمر بن عبد الملك الخولاني، نا محمد بن بكر، نا سليمان بن الأشعث، نا قبيصة، نا الليث عن محمد بن عجلان، أن رجلا من موالي عبد الله بن عامر بن ربيع العدوي، حدثه عن عبد الله بن عامر أنه قال دعتني أمي يوما ورسول الله صلى الله عليه وسلم قاعد في بيتها فقالت ها تعال أعطك فقال لها رسول الله صلى الله عليه وسلم ما أردت أن تعطيه قالت أعطيه تمرا فقال لها رسول الله: أما إنك لو لم تعطيه شيئا كتبت عليك كذبة. حدثنا عبد الرحمن بن عبد الله بن خالد الهمداني، نا إبراهيم بن أحمد البلخي، نا الفربري، نا البخاري، نا بشربن مرحوم، نا يحيى بن سليم، عن إسماعيل بن أمية، عن سعيد بن أبي سعيد عن أبي هريرة عن النبي صلى الله عليه وسلم قال قال الله عز وجل ثلاثة أنا خصمهم يوم القيامة: رجل أعطى بي ثم غدر، ورجل باع حرا فأكل ثمنه، ورجل استأجر أجيرا فاستوفى منه ولم يعطه أجره. حدثنا عبد الرحمن بن عبد الله، نا إبراهيم بن أحمد، نا الفربري، نا البخاري، نا مسدد، نا يحيى بن سعيد هو القطان، نا شعبة، حدثني أبو حمزة، نا زهد بن مضرب قال سمعت عمران بن حصين يحدث عن النبي صلى الله عليه وسلم قال خيركم قرني ثم الذين يلونهم ثم الذين يلونهم، ثم يجيء قوم ينذرون ولا يفون، ويخونون ولا يؤتمنون

[8] **Translator’s note (L1854):** The wording rendered “one who has command over the public” is textually awkward: the supplied text has amr/amara ʿammah, apparently defective for amir ʿammah, “a commander over the public.” The supplied wording says “do not be heedless” (la taghfalu). It appears to be a transcription error for “do not misappropriate spoils” (la taghullu), but the supplied wording has been translated.

[9] **Translator’s note (L1857):** The opening completes the name ʿUrwah ibn al-Zubayr from the preceding segment. The text calls Abu Jandal “ibn Abi Sahl,” while identifying his father immediately afterward as Suhayl ibn ʿAmr. The inconsistent name has been preserved.

[10] **Translator’s note (L1858):** “Abu Basir came to him with a man from Quraysh” follows the supplied wording, which appears disrupted: the subsequent explanation and narrative concern men sent to recover Abu Basir. The supplied يأكون appears to be a transcription error for يأكلون, “they eat,” as reflected in the translation. “Woe to his mother!” renders a conventional Arabic exclamation; here it accompanies the description of Abu Basir as a formidable kindler of war.

[11] **Qur’an references (L1851):** Qur’an 16:95 (An-Nahl); Qur’an 6:152 (Al-An’am); Qur’an 17:34 (Al-Isra); Qur’an 76:7 (Al-Insan); Qur’an 2:270 (Al-Baqarah); Qur’an 9:75 (At-Tawbah); Qur’an 9:76 (At-Tawbah); Qur’an 9:77 (At-Tawbah).

Allah ﷺ was sitting in her house. She said: 'Here, come, and I will give you something.' The Messenger of Allah ﷺ said to her: 'What did you intend to give him?' She said: 'I will give him some dates.' The Messenger of Allah said to her: 'Indeed, had you not given him anything, a lie would have been recorded against you.'"

ʿAbd al-Rahman ibn ʿAbd Allah ibn Khalid al-Hamdani narrated to us: Ibrahim ibn Ahmad al-Balkhi narrated to us: al-Firabri narrated to us: al-Bukhari narrated to us: Bishr ibn Marhum narrated to us: Yahya ibn Sulaym narrated to us, from Ismaʿil ibn Umayyah, from Saʿid ibn Abi Saʿid, from Abu Hurayrah, from the Prophet ﷺ, who said: "Allah, Mighty and Majestic, said: 'There are three whose adversary I shall be on the Day of Resurrection: a man who gives a pledge in My name and then acts treacherously; a man who sells a free person and consumes his price; and a man who hires a worker, receives his work in full, and does not give him his wages.'"

ʿAbd al-Rahman ibn ʿAbd Allah narrated to us: Ibrahim ibn Ahmad narrated to us: al-Firabri narrated to us: al-Bukhari narrated to us: Musaddad narrated to us: Yahya ibn Saʿid—namely, al-Qattan—narrated to us: Shuʿbah narrated to us: Abu Hamzah narrated to me: Zahd ibn Mudarrib narrated to us, saying: I heard ʿImran ibn Husayn relate from the Prophet ﷺ that he said: "The best of you are my generation, then those who follow them, then those who follow them. Then there will come people who make vows and do not fulfill them, and who betray trusts and are not entrusted." He mentioned the rest of the report.

Through the same chain to al-Bukhari: Muhammed ibn Muqatil narrated to us: ʿAbd Allah ibn al-Mubarak informed us: ʿUbayd Allah ibn ʿUmar informed us, from Nafiʿ, from Ibn ʿUmar, who said: ʿUmar said: "O Messenger of Allah, during the time of pre-Islamic ignorance I vowed to spend a night in devotional seclusion in the Sacred Mosque." He said: "Fulfill your vow."

ʿAbd Allah ibn Rabiʿ narrated to us: Muhammed ibn Ishaq narrated to us: Ibn al-Aʿrabi narrated to us: Abu Dawud al-Sijistani narrated to us: Sulayman ibn Dawud al-Mahri narrated to us: Ibn Wahb narrated to us: Sulayman ibn Bilal narrated to me: Kathir ibn Zayd narrated to us, from al-Walid ibn

وذكر باقي الخبر. وبه إلى البخاري: نا محمد بن مقاتل، أنا عبد الله بن المبارك، أنا عبيد الله بن عمر، عن نافع، عن ابن عمر قال: قال عمر: يا رسول الله إني نذرت في الجاهلية أن أعتكف ليلة في المسجد الحرام قال: أوف بنذرك. حدثنا عبد الله بن ربيع، نا محمد بن إسحاق، نا ابن الأعرابي، نا أبو داود السجستاني، نا سليمان بن داود المهري، ثنا ابن وهب حدثني سليمان بن بلال، ثنا كثير بن زيد، عن الوليد بن رباح عن أبي هريرة قال قال رسول الله صلى الله عليه وسلم المسلمون على شروطهم

Rabah, from Abu Hurayrah, who said: The Messenger of Allah, may Allah bless him and grant him peace, said: “Muslims are bound by their stipulated conditions.”[12][13][14][15]

L1864–1873 Al-Muhallab al-Asadi narrated to us: Ibn Munas narrated to us: Ibn Masrur narrated to us: Yunus ibn ʿAbd al-Aʿla narrated to us: Ibn Wahb narrated to us: Hisham ibn Saʿd narrated to us, from Zayd ibn Aslam, that the Messenger of Allah ﷺ said: “A believer’s promise is binding.” Through the same chain to Ibn Wahb: Ismaʿil ibn ʿAyyash informed me, from Abu Ishaq, that the Messenger of Allah ﷺ used to say: “Do not make your brother a promise and break it, for that engenders enmity between you and him.” Through the same chain to Ibn Wahb: al-Layth ibn Saʿid informed me, from ʿUqayl ibn Khalid, from Ibn Shihab, from Abu Hurayrah, that the Prophet ﷺ said: “Whoever says to a child, ‘Come, here is something for you,’ and then gives him nothing: that is a lie.”

They said: “These, then, are explicit texts that make what we have mentioned obligatory, unless an explicit text comes specifying an exception to some part of their general scope. That part is then excluded, while everything else remains permissible.”

Abu Muhammed said: We also found those who maintain the invalidity of every contract, every condition, every covenant, and every promise, except that which an explicit text has expressly permitted by name. They say: Allah, Mighty and Majestic, said: “Forbidden to you are carrion, blood, the flesh of swine, that over which a name other than Allah’s has been invoked, the strangled animal, the animal beaten to death, the animal killed by a fall, the animal gored to death, and that which a beast of prey has eaten—except what

حدثنا المهلب الأسدي، نا ابن مناس، نا ابن مسرور، نا يونس بن عبد الأعلى، نا ابن وهب، نا هشام بن سعد عن زيد بن أسلم أن رسول الله صلى الله عليه وسلم قال وأي المؤمن واجب وبه إلى ابن وهب أخبرني إسماعيل بن عياش عن أبي إسحاق أن رسول الله صلى الله عليه وسلم كان يقول ولا تعد أخاك عدة وتخلفه فإن ذلك يورث بينك وبينه عداوة وبه إلى ابن وهب: أخبرني الليث بن سعيد عن عقيل بن خالد عن ابن شهاب عن أبي هريرة أن النبي صلى الله عليه وسلم قال من قال لصبي تعال هاه لك ثم لم يعطه شيئا فهي كذبة. قالوا: فهذه نصوص توجب ما ذكرنا، إلا أن يأتي نص بتخصيص شيء من عمومها فيخرج ويبقى ما عداه على الجواز. قال أبو محمد: ووجدنا من قال ببطلان كل عقد وكل شرط وكل عهد وكل وعد، إلا ما جاء نص بإجازته باسمه ويقولون قال الله عز وجل {حرمت عليكم لميتة ولدم ولحم لخنزير ومآ أهل لغير لله به ولمنخنقة ولموقوذة ولمتردية ولنطيحة ومآ أكل لسبع إلا ما ذكيتم وما ذبح على لنصب وأن تستقسموا بلأزلام ذلكم فسق ليوم يئس لذين كفروا من دينكم فلا تخشوهم وخشون ليوم أكملت لكم دينكم وأتممت عليكم نعمتي ورضيت لكم لأسلام دينا فمن ضطر في مخمصة غير متجانف لإثم فإن لله غفور رحيم} وقال تعالى {لطلاق مرتان فإمساك بمعروف أو تسريح بإحسان ولا يحل لكم أن تأخذوا مما آتيتموهن شيئا إلا أن يخافآ ألا يقيما حدود لله فإن خفتم ألا يقيما حدود لله فلا جناح عليهما فيما فتدت به تلك حدود لله فلا تعتدوها ومن يتعد حدود لله فأولئك هم لظالمون} وقال تعالى {ومن يعص لله ورسوله ويتعد حدوده يدخله نارا خالدا فيها وله عذاب مهين} حدثنا عبد الرحمن بن يوسف، نا أحمد بن فتح، نا عبد الوهاب بن عيسى، ثنا أحمد بن

[12] **Translator’s note (L1861):** The supplied narrator’s name is زهد بن مضرب, rendered “Zahd ibn Mudarrib”; it appears to be a defective reading of the name usually given as Zahdam ibn Mudarrib. The final “Ibn” continues into “al-Aʿrabi” in the next segment.

[13] **Translator’s note (L1862):** The opening completes “Ibn al-Aʿrabi” from the preceding segment. The blessing at the end is incomplete here and continues in the next segment.

[14] **Translator’s note (L1863):** “And grant him peace” completes the blessing begun in the preceding segment. “Said” is positioned here in English to introduce the quotation; its Arabic equivalent occurs before the blessing in that preceding segment.

[15] **Hadith references (L1860):** Sahih al-Bukhari 2270.

you slaughter—and that which is sacrificed upon stone altars, and that you seek allotments by divining arrows. That is transgression. Today those who disbelieve have despaired of your religion, so do not fear them, but fear Me. Today I have perfected your religion for you, completed My favor upon you, and approved Islam as your religion. But whoever is compelled by severe hunger, without inclining toward sin—Allah is indeed forgiving, merciful." And He, Exalted, said: "Divorce is twice; then either retention on equitable terms or release with kindness. It is not lawful for you to take anything of what you have given them, unless the two fear that they will not uphold Allah's limits. If you fear that the two will not uphold Allah's limits, there is no blame upon either of them concerning that with which she ransoms herself. Those are Allah's limits, so do not transgress them. Whoever transgresses Allah's limits—it is they who are the wrongdoers." And He, Exalted, said: "Whoever disobeys Allah and His Messenger and transgresses His limits, He will admit him into a Fire, abiding therein forever, and he shall have a humiliating punishment."

ʿAbd al-Rahman ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: ʿAbd al-Wahhab ibn ʿIsa narrated to us: Ahmad narrated to us ibn Muhammed narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Abu Kurayb Muhammed ibn al-Ala al-Hamdani narrated to us: Abu Usamah narrated to us: Hisham ibn Urwah informed us, from his father, who said: Aishah, Mother of the Believers, informed me that the Messenger of Allah ﷺ delivered an address one evening. He praised Allah and extolled Him as He deserves, then said: "To proceed: what is the matter with people who stipulate conditions that are not in the Book of Allah? Any condition that is not in the Book of Allah is invalid, even if there are a hundred conditions. The Book of Allah has the greater right, and Allah's condition is more binding." Abd al-Rahman ibn Abd Allah ibn Khalid al-Hamdani narrated to us: Abu Ishaq al-Balkhi narrated to us: al-Firabri narrated to us: al-Bukhari narrated to us: Ali ibn Abd Allah narrated to us: Sufyan narrated to us, from Yahya—that is, Ibn Said al-Ansari—from Amrah bint Abd al-Rahman, from Aishah, Mother of the Believers, who said: The Messenger of Allah stood ﷺ upon the pulpit and said: "What is the mat-

محمد، نا أحمد بن علي، نا مسلم بن الحجاج، ثنا أبو كريب محمد بن العلاء الهمداني، ثنا أبو أسامة، أنبأنا هشام بن عروة، عن أبيه قال: أخبرتني عائشة أم المؤمنين أن رسول الله صلى الله عليه وسلم خطب عشية فحمد الله وأثنى عليه بما هو أهله، ثم قال: أما بعد، فما بال أقوام يشترطون شروطا ليست في كتاب الله، ما كان من شرط ليس في كتاب الله فهو باطل ولو كان مائة شرط، كتاب الله أحق وشرط الله أوثق. حدثنا عبد الرحمن بن عبد الله بن خالد الهمداني، ثنا أبو إسحاق البلخي، حدثنا الفربري، نا البخاري، نا علي بن عبد الله، نا سفيان، عن يحيى هو ابن سعيد الأنصاري، عن عمرة بنت عبد الرحمن، عن عائشة أم المؤمنين قالت قام رسول الله صلى الله عليه وسلم على المنبر فقال ما بال أقوام يشترطون شروطا ليست في كتاب الله، من اشترط شروطا ليس في كتاب الله فليس له، وإن شرط مائة شرط. قالوا: فهذه الآيات وهذا الخبر، براهين قاطعة في إبطال كل عهد وكل عقد وكل وعد وكل شرط ليس في كتاب الله الأمر به، أو النص على إباحة عقده، لأن العقود والعهود والأوعاد شروط، واسم الشرط يقع على جميع ذلك. قال أبو محمد: وأيضا فيقال لمن أوجب الوفاء بعقد أو عهد أو شرط أو وعد، ليس في نص القرآن أو السنة الثابتة إيجاب عقد وإنفاذه: إننا بالضرورة ندري أنه لا يخلو كل عقد وعهد وشرط ووعد التزمه أحد لأحد وجهين لا ثالث لهما: إما أن يكون في نص القرآن أو السنة إيجابه وإنفاذه، فإن كان كذلك فنحن لا نخالفكم في إنفاذ ذلك وإيجابه، وإنما أن يكون ليس في نص القرآن ولا في السنة إيجابه ولا إنفاذه، ففي هذا اختلفنا. فنقول لكم الآن: فإن كان هكذا فإنه ضرورة لا ينفك من أحد أربعة أوجه لا خامس لها أصلا: إما أن يكون فيه إباحة ما حرم الله تعالى في القرآن أو على لسان رسول الله صلى الله عليه وسلم فهذا عظيم لا يحل قال تعالى {قاتلوا لذين لا يؤمنون بلله ولا بليوم لآخر ولا يحرمون ما حرم لله ورسوله

ter with people who stipulate conditions that are not in the Book of Allah? Whoever stipulates conditions that are not in the Book of Allah has no entitlement to them, even if he stipulates a hundred conditions." They said: These verses and this report are conclusive demonstrations of the invalidity of every covenant, every contract, every promise, and every condition for which the Book of Allah contains neither a command nor an explicit text permitting its conclusion, because contracts, covenants, and promises are conditions, and the term "condition" applies to all of these. Abu Muhammed said: Furthermore, one should say to anyone who makes fulfillment of a contract, covenant, condition, or promise obligatory when neither the text of the Quran nor the established Sunnah makes its conclusion and enforcement obligatory: We know by necessity that every contract, covenant, condition, and promise that someone undertakes toward someone else must fall into one of two categories, with no third: either the text of the Quran or the Sunnah makes it obligatory and enforceable—in which case we do not disagree with you about enforcing it and making it obligatory—or neither the text of the Quran nor the Sunnah makes it obligatory or enforceable. It is concerning this that we disagree. We now say to you: If this is so, it necessarily must fall into one of four categories, with absolutely no fifth. Either it involves permitting what Allah Most High has forbidden in the Quran or through the words of the Messenger of Allah ﷺ, and this is a grave matter that is impermissible. He Most High said: "Fight those who do not believe in Allah or in the Last Day, who do not forbid what Allah and His Messenger have forbidden, and who do not profess the religion of truth, among those who were given the Scripture, until they pay the tribute by hand while they are humbled." We then ask them about someone who undertakes, in his covenant, condition, contract, and promise, to make swine, mothers, and the killing of a person lawful. If he permits this, he has disbelieved; if he distinguishes between any of these things, he contradicts himself, speaks foolishly, and makes arbitrary, false pronouncements concerning religion. Or he has undertaken therein to forbid what Allah Most High has permitted in the Quran or through the words of His Messenger ﷺ, and this is a grave matter that is impermissible. He Most High said: "O Prophet, why do you forbid what Allah has made lawful for you, seeking the pleasure of your wives? And

ولا يدينون دين لحق من لذين أوتوا لكتاب حتى يعطوا لجزية عن يد وهم صاغرون} ونسألهم حينئذ عمن التزم في عهده وشرطه وعقده ووعده، إحلال الخنزير والأمهات وقتل النفس، فإن أباح ذلك كفر، وإن فرق بين شيء من ذلك تناقض وسخف وتحكم في الدين بالباطل. وإما أن يكون التزم فيه تحريم ما أباحه الله تعالى في القرآن أو على لسان رسوله صلى الله عليه وسلم فهذا عظيم لا يحل قال تعالى {يأيها النبي لم تحرم مآ أحل الله لك تبتغي مرضاة أزواجك والله غفور رحيم} ونسألهم حينئذ عمن حرم الماء والخبز والزواج وسائر المباحات، وقد صح أن محرم الحلال كمحلل الحرام ولا فرق. وإما أن يكون التزم ما أوجبه الله تعالى في القرآن أو على لسان رسول الله صلى الله عليه وسلم فهذا عظيم لا يحل ونسألهم حينئذ عمن التزم في عهده وعقده وشرطه إسقاط الصلوات، وإسقاط صوم شهر رمضان وسائر ذلك، فمن أجاز ذلك فقد كفر، وإما أن يكون أوجب على نفسه ما لم يوجبه الله تعالى عليه، فهذا عظيم لا يحل، ونسألهم عمن التزم صلاة سادسة أو حج إلى غير مكة، أو في غير أشهر الحج، وكل هذه الوجوه تعد لحدود الله، وخروج عن الدين، والمفرق بين شيء من ذلك قائل في الدين بالباطل، نعوذ بالله من ذلك. فإن قد صح ما ذكرنا فلم يبق إلا الكلام على الآيات التي احتج بها أهل المقالة الأولى، وعلى الأحاديث التي شغبوا بإيرادها وبيان حكمها، حتى يتألف بعون الله تعالى ومنه مع هذه، فإن الدين كله واحد لا تخالف فيه قال الله عز وجل {أفلا يتدبرون لقرآن ولو كان من عند غير لله لوجدوا فيه ختلافا كثيرا} فنقول وبالله تعالى نتأيد: إن كل ما ذكروا من ذلك فلا حجة لهم في شيء منه أما قول الله عز وجل {ولا تقربوا مال ليتيم إلا بلتي هي أحسن حتى يبلغ أشده وأوفوا بالعهد إن لعهد كان مسؤولا} و {كبر مقتا عند لله أن تقولوا ما لا تفعلون} {ولذين هم لأماناتهم وعهدهم راعون} {أوكلما عاهدوا عهدا نبذه فريق

Allah is forgiving, merciful." We then ask them about someone who forbids water, bread, marriage, and all other permitted things. It has been established that one who forbids what is lawful is like one who permits what is forbidden, with no distinction. Or he has undertaken what Allah Most High has made obligatory in the Quran or through the words of the Messenger of Allah—may Allah bless him and grant him peace—and this is a grave matter that is impermissible. We then ask them about someone who undertakes, in his covenant, contract, and condition, to abolish the prayers and to abolish fasting during the month of Ramadan, and everything else of that kind. Whoever permits this has disbelieved. Or he has imposed upon himself what Allah Most High has not imposed upon him, and this is a grave matter that is impermissible. We ask them about someone who undertakes a sixth prayer, or a pilgrimage to somewhere other than Mecca, or outside the months of pilgrimage. All these categories constitute transgression of Allah's limits and departure from the religion. Whoever distinguishes between any of these things speaks falsely concerning religion. We seek refuge in Allah from that. Since what we have mentioned has been established, all that remains is to discuss the verses adduced as evidence by the proponents of the first position, and the hadiths whose citation they used to stir up controversy, and to explain their ruling so that, with Allah Most High's assistance and favor, they harmonize with these. For the religion is all one, with no disagreement within it. Allah, mighty and majestic, said: "Do they not reflect upon the Quran? Had it been from anyone other than Allah, they would have found much disagreement within it." We say, seeking strength through Allah Most High: Nothing whatsoever among all that they have mentioned affords them any evidence. As for the words of Allah, mighty and majestic: "Do not approach the orphan's property except in the best manner, until he reaches his maturity. And fulfill the covenant: surely the covenant will be asked about"; and "It is greatly hateful in Allah's sight that you say what you do not do"; "And those who observe their trusts and their covenant"; "Is it that whenever they make a covenant, a party of them casts it aside? Rather, most of them do not believe"; "Righteousness is not that you turn your faces toward the east and the west; rather, righteousness is one who believes in Allah, the Last Day, the angels, the Scripture, and the prophets, and gives wealth,

منهم بل أكثرهم لا يؤمنون} {ليس لبر أن تولوا وجوهكم قبل لمشرق ولمغرب ولكن لبر من آمن بلله وليوم لآخر ولملائكة ولكتاب ولنبيين وآتى لمال على حبه ذوي لقربى وليتامى ولمساكين وبن لسبيل ولسآئلين وفي لرقاب وأقام لصلاة وآتى لزكاة ولموفون بعهدهم إذا عاهدوا ولصابرين في لبأسآء ولضراء وحين لبأس أولئك لذين صدقوآ وأولئك هم لمتقون} و {بلى من أوفى بعهده واتقى فإن الله يحب المتقين} و {إن لذين يبايعونك إنما يبايعون لله يد لله فوق أيديهم فمن نكث فإنما ينكث على نفسه ومن أوفى بما عاهد عليه لله فسيؤتيه أجرا عظيما} و {وذكروا نعمة لله عليكم وميثاقه لذي واثقكم به إذ قلتم سمعنا وأطعنا وتقوا لله إن لله عليم بذات لصدور} و {يوفون بلنذر ويخافون يوما كان شره مستطيرا} و {ومآ أنفقتم من نفقة أو نذرتم من نذر فإن لله يعلمه وما للظالمين من أنصار} و {وذكر في لكتاب إسماعيل إنه كان صادق لوعد وكان رسولا نبيا} والحديثان اللذان فيهم: أوف بنذرك، وذم الذين ينذرون ولا يوفون، والخبر فيم: أعطى بي ثم غدر، فإنها جمل قد جاء نص آخر يبين أنها كلها ليست على عمومها، ولكنها في بعض العهود، وبعض العقود، وبعض النذور وبعض الشروط وهي قول رسول الله صلى الله عليه وسلم لا نذر في معصية الله تعالى ولا فيما يملك العبد وقوله صلى الله عليه وسلم من نذر أن يطيع الله فليطعه ومن نذر أن يعصي الله تعالى فلا يعصه مع ما ذكرنا من قوله صلى الله عليه وسلم كل شرط ليس في كتاب الله فهو باطل فصح بهذه النصوص أن تلك الآيات والخبرين إنما هي فيمن شرط أو نذر أو عقد أو عاهد على ما جاء القرآن أو السنة بإلزامه فقط. وقد وافقنا المخالفون ههنا، على أن من نذر أو عقد أو عاهد أو شرط أن يزني أو يكفر أو يقتل مسلما ظلما، أو أن يأخذ مالا بغير حق أو أن يترك الصلاة فإنه لا يحل له الوفاء بشيء من ذلك، لأنه معصية، ولا فرق بين هذا وبين شرط وعاهد وعقد أن يضيع حدا، أو أن يبطل حقا

despite his love for it, to relatives, orphans, the needy, the wayfarer, those who ask, and for freeing those in bondage; and establishes prayer and gives the obligatory alms; and those who fulfill their covenant when they make a covenant, and those who are patient in hardship, affliction, and the time of battle. Those are the ones who have been truthful, and those are the ones who fear Allah"; and "Indeed, whoever fulfills his covenant and fears Allah—surely Allah loves those who fear Him"; and "Those who pledge allegiance to you are only pledging allegiance to Allah. Allah's hand is above their hands. Whoever breaks his pledge breaks it only to his own detriment; and whoever fulfills what he has covenanted with Allah, He will grant him a tremendous reward"; and "Remember Allah's favor upon you and His covenant by which He bound you, when you said, 'We hear and obey.' And fear Allah: surely Allah knows what is within the breasts"; and "They fulfill the vow and fear a day whose evil is widespread"; and "Whatever expenditure you make or vow you vow, surely Allah knows it, and the wrongdoers have no helpers"; and "Mention Ishmael in the Scripture: he was true to his promise, and he was a messenger, a prophet"; and the two hadiths containing "Fulfill your vow" and the condemnation of those who make vows and do not fulfill them; and the report concerning one who "gave a pledge in My name and then betrayed it—" these are statements for which another explicit text has come, explaining that none of them applies in its full generality, but that they concern certain covenants, certain contracts, certain vows, and certain conditions. That text is the saying of the Messenger of Allah ﷺ: "There is no vow in disobedience to Allah Most High, nor concerning what the servant owns"; and his saying ﷺ: "Whoever vows to obey Allah, let him obey Him; and whoever vows to disobey Allah Most High, let him not disobey Him"; together with his saying ﷺ that we have mentioned: "Every condition that is not in the Book of Allah is invalid." These explicit texts establish that those verses and the two reports concern only someone who stipulates a condition, makes a vow, concludes a contract, or makes a covenant concerning something that the Quran or the Sunnah has made binding. Our opponents have agreed with us here that if someone vows, contracts, covenants, or stipulates that he will commit unlawful sexual intercourse, disbelieve, kill a Muslim unjustly, take property without right, or abandon prayer, it is not lawful for him to fulfill

أو أن يمنع مباحا، والمفرق بين ذلك مبطل متناقض متحكم في الدين بالباطل، فارتفع الإشكال في هذا الباب جملة والحمد لله رب العالمين. وكذلك قول الله عز وجل {ولا تقولوا لما تصف ألسنتكم لكذب هذا حلال وهذا حرام لتفتروا على الله لكذب إن لذين يفترون على الله لكذب لا يفلحون * متاع قليل ولهم عذاب أليم} فهذا غاية البيان في صحة قولنا، والحمد لله رب العالمين. وباليقين ندري أن من حرم على نفسه أن يتزوج على امرأته، أو أن يتسرى عليها، أو ألا يرحلها، أو ألا يغيب عنها، فقد حرم ما أحل الله تعالى له: وما أمره تعالى به إذ يقول {وإن خفتم ألا تقسطوا في ليتامى فنكحوا ما طاب لكم من لنسآء مثنى وثلاث ورباع فإن خفتم ألا تعدلوا فواحدة أو ما ملكت أيمانكم ذلك أدنى ألا تعولوا}

any of that, because it is disobedience. There is no distinction between this and stipulating, covenanting, and contracting to neglect a prescribed limit, nullify a right, or prevent something permitted. Whoever distinguishes between these is advancing falsehood, contradicting himself, and making arbitrary, false pronouncements concerning religion. Thus the difficulty in this entire subject is removed, and praise belongs to Allah, Lord of the worlds. Likewise, the words of Allah, mighty and majestic: "Do not say, concerning the falsehood your tongues describe, 'This is lawful and this is forbidden,' so as to fabricate falsehood against Allah. Surely those who fabricate falsehood against Allah will not prosper. A little enjoyment—and they will have a painful punishment." This is the utmost clarification of the soundness of our position, and praise belongs to Allah, Lord of the worlds. We know with certainty that whoever forbids himself to marry another woman in addition to his wife, or to take a concubine in addition to her, or not to relocate her, or not to be absent from her, has forbidden what Allah Most High has made lawful for him and what He Most High has commanded him, when He says: "If you fear that you will not deal equitably with orphans, then marry such women as are pleasing to you, two, three, or four. But if you fear that you

will not act justly, then one, or those whom your right hands possess. That is more likely to keep you from acting unjustly."[16][17][18][19][20][21][22][23][24]

[16]**Translator's note (L1864):** The name الليث بن سعيد is rendered "al-Layth ibn Saʿid" as supplied; it appears to be an error for al-Layth ibn Saʿd. The Qurʾanic quotations correspond to 5:3, 2:229, and 4:14. The supplied transcription repeatedly omits initial alifs and has other defective spellings; the recognizable wording is translated without changing its substantive content. The final narrator's name continues as "Ahmad ibn Muhammed" in the following segment.

[17]**Translator's note (L1865):** The opening "ibn Muhammed" continues a transmitter's name from the preceding segment.

[18]**Translator's note (L1867):** The supplied wording وإنما أن يكون is syntactically awkward; the surrounding twofold division indicates the alternative rendered "or neither." "Making mothers lawful" refers elliptically to permitting sexual relations with mothers; the Arabic itself supplies no explanatory noun.

[19]**Translator's note (L1868):** The third alternative reads "undertaken what Allah … has made obligatory." The following condemnation and examples of abolishing obligatory prayers suggest that a word such as "abolishing" has been omitted from the Arabic. The supplied wording has been retained. The salutation ends mid-phrase and continues in the next unit.

[20]**Translator's note (L1869):** The opening completes the salutation begun in the preceding unit.

[21]**Translator's note (L1870):** The quotation beginning "Righteousness is not …" retains the Arabic's grammatical shift from the abstract "righteousness" to "one who believes," followed by plural descriptions.

[22]**Translator's note (L1871):** The final report is introduced by the irregular wording فيم أعطى بي ثم غدر, apparently referring to a person who gives a pledge in Allah's name and then betrays it. The translation makes that elliptical reference explicit.

[23]**Translator's note (L1873):** The first quoted report says "nor concerning what the servant owns." The familiar wording instead concerns what the servant does not own. The supplied Arabic lacks the negation, and its wording has been retained. The final list switches from forbidding oneself to marry or take a concubine to forbidding oneself "not to relocate her" and "not to be absent from her." These negatives make the construction awkward and appear contrary to the intended argument about conditions restricting otherwise permitted conduct; they have been retained.

وقال تعالى: {إلا على أزواجهم أو ما ملكت أيمانهم فإنهم غير ملومين} وقال عز وجل {إلا على أزواجهم أو ما ملكت أيمانهم فإنهم غير ملومين} وقال تعالى {عندها جنة لمأوى} وقال تعالى {هو لذي يسيركم في لبر ولبحر حتى إذا كنتم في لفلك وجرين بهم بريح طيبة وفرحوا بها جآءتها ريح عاصف وجآءهم لموج من كل مكان وظنوا أنهم أحيط بهم دعوا لله مخلصين له لدين لئن أنجيتنا من هذه لنكونن من لشاكرين} وكذلك من عاهد على تأمين من لا يحل تأمينه وعلى إبقاء مال في ملك من لا يحل له تملكه وعلى اسقاط حد الله تعالى أو قود، فإنه قد عقد على معصية، وسمى الحلال حراما،

L1874–1875 And He, exalted, said: “Except with their wives or those whom their right hands possess, for then they are not blameworthy.” And He, mighty and majestic, said: “Except with their wives or those whom their right hands possess, for then they are not blameworthy.” And He, exalted, said: “Near it is the Garden of Refuge.” And He, exalted, said: “He is the One who conveys you over land and sea, until, when you are aboard the ships and they sail with them in a pleasant wind, and they rejoice in it, a tempestuous wind comes upon them, and the waves come upon them from every place, and they think that they are surrounded, they call upon Allah, devoting their religion sincerely to Him: ‘If You deliver us from this, we shall surely be among the grateful.’” Likewise, whoever makes a covenant to grant protection to someone whom it is unlawful to grant protection, and to leave property in the ownership of someone for whom owning it is unlawful, and to waive a prescribed punishment of Allah, exalted, or legal retaliation, has undertaken a binding commitment to an act of disobedience and has called the lawful unlawful.[25][26]

والقرآن قد جاء بتكذيب من فعل ذلك وبنهيه عن ذلك، وهكذا ما لم يذكر ما ليس في القرآن أو السنة إمضاؤه ومن عجائب الدنيا احتجاج من احتج بالخبر الذي فيه أوف بنذرك، وهو أو مخالف لهذا الخبر، لأنه ورد في معنيين. أحدهما: الوفاء بما نذره المرء في جاهليته وكفره وهم لا يقولون بإنفاذ ذلك. والثاني: أنه ورد في اعتكاف ليلة، وهم لا يقولون بذلك فمن أعجب شأنا ممن يحتج بخبر عن النبي صلى الله عليه وسلم فيما ليس فيه منه شيء أصلا وهو قد عصى ذلك الخبر في كل ما فيه، ونعوذ بالله من هذه الأحوال، فليس في عكس الحقائق أكثر من هذا، وأما نحن فنلزم من نذر في كفره طاعة الله عز وجل، ثم أسلم أن يفي بما نذر من ذلك اتباعا لأمر رسول الله صلى الله عليه وسلم بذلك وكذلك من نذر اعتكاف ليلة فإنه يلزمه الوفاء به أيضا. ومما قدمنا قبل من نذر الباطل وعقده: من شرط لامرأته إن نكح عليها فالداخلة بنكاح طالق، وإن تسرى عليها فالسرية حرة، وإن غاب عنها مدة كذا أو أرحلها فأمرها بيدها

L1876–1880 The Quran has declared whoever does that a liar and forbidden him to do it. The same applies to what has not been mentioned, whose enforcement is not provided for in the Quran or the Sunnah. Among the wonders of this world is the argument of someone who invokes the report containing the words, “Fulfill your vow,” while he himself contradicts this report. For it concerns two matters: one is fulfilling what a person vowed during his state of pre-Islamic ignorance and unbelief, whereas they do not hold that this must be carried out; the second is that it concerns a night of devotional

[24] **Qur’an references (L1864):** Qur’an 5:3 (Al-Ma’idah); Qur’an 2:229 (Al-Baqarah); Qur’an 4:14 (An-Nisa); Qur’an 66:1 (At-Tahrim); Qur’an 4:82 (An-Nisa); Qur’an 17:34 (Al-Isra); Qur’an 61:3 (As-Saf); Qur’an 2:100 (Al-Baqarah); Qur’an 3:76 (Ali ’Imran); Qur’an 48:10 (Al-Fath); Qur’an 5:7 (Al-Ma’idah); Qur’an 76:7 (Al-Insan); Qur’an 2:270 (Al-Baqarah); Qur’an 16:116 (An-Nahl); Qur’an 16:117 (An-Nahl); Qur’an 37:182 (As-Saffat); Qur’an 4:3 (An-Nisa).

[25] **Translator’s note (L1874):** The first Quranic quotation is repeated verbatim in the supplied text; the repetition is retained. The quotation about the Garden of Refuge appears unrelated to the surrounding argument, but is translated as supplied.

[26] **Qur’an references (L1874):** Qur’an 23:6 (Al-Mu’minun); Qur’an 70:30 (Al-Ma’arij); Qur’an 10:22 (Yunus).

retreat, whereas they do not accept that. Who, then, is more astonishing than someone who invokes a report from the Prophet ﷺ in support of something of which it contains absolutely nothing, while himself disobeying that report in everything it contains? We seek refuge in Allah from such states. No reversal of realities could go further than this. As for us, we require someone who, during his unbelief, vowed an act of obedience to Allah, mighty and majestic, and then embraced Islam, to fulfill what he vowed of that, following the command of the Messenger of Allah ﷺ concerning it. Likewise, whoever vows a night of devotional retreat is also required to fulfill it. Among the invalid vows and commitments we mentioned earlier is the case of someone who stipulates for his wife that, if he marries another woman while married to her, the woman entering the marriage is divorced; that, if he takes a concubine while married to her, the concubine is free; and that, if he is absent from her for such-and-such a period or makes her relocate, her affair is in her own hands, so that she may divorce herself or retain the marriage. All of this consists of acts of disobedience, opposition to the command of Allah, exalted, and transgression of Allah's limits. For Allah, exalted, has never placed a woman's affair in her own hands, except solely in the case of an emancipated woman who has a husband. Rather, He has entrusted women's affairs to men and placed them in their hands. Thus He, exalted, said: "Men are in charge of women because Allah has favored some of them over others and because they spend of their wealth. Righteous women are therefore obedient, guarding in absence what Allah has guarded. As for those whose recalcitrance you fear, admonish them, abandon them in their beds, and strike them. Then, if they obey you, seek no way against them. Indeed, Allah is Most High, Great." And He entrusted divorce to men, not to women. Thus He, exalted, said: "O Prophet, when you divorce women, divorce them with regard to their waiting period, and count the waiting period. Fear Allah, your Lord. Do not expel them from their houses, nor should they leave, unless they commit a manifest indecency. Those are Allah's limits, and whoever transgresses Allah's limits has wronged himself. You do not know: perhaps Allah will bring about some matter after that." Nor has He instituted any divorce before marriage, or any emancipation before ownership. Whoever calls any of the rulings we have mentioned

تطلق نفسها أو تمسك، فكل هذا معاص وخلاف لأمر الله تعالى، وتعد لحدود الله، لأن الله تعالى لم يجعل قط أمر امرأة بيدها إلا المعتقة ولها زوج فقط، بل جعل أمر النساء إلى الرجال وبأيديهم فقال تعالى {لرجال قوامون على لنسآء بما فضل لله بعضهم على بعض وبمآ أنفقوا من أموالهم فلصالحات قانتات حافظات للغيب بما حفظ لله وللاتي تخافون نشوزهن فعظوهن وهجروهن في لمضاجع وضربوهن فإن أطعنكم فلا تبغوا عليهن سبيلا إن لله كان عليا كبيرا} وجعل الطلاق إلى الرجال لا إلى النساء فقال تعالى {يأيها لنبي إذا طلقتم لنسآء فطلقوهن لعدتهن وأحصوا لعدة وتقوا لله ربكم لا تخرجوهن من بيوتهن ولا يخرجن إلا أن يأتين بفاحشة مبينة وتلك حدود لله ومن يتعد حدود لله فقد ظلم نفسه لا تدرى لعل لله يحدث بعد ذلك أمرا} ولم يجعل طلاقا قبل نكاح، ولا عتقا قبل ملك، فمسمى كل حكم مما ذكرنا حلالا، مفتر على الله تعالى، منهي عن كل ذلك، فصح أنها عقود باطل لا يصح شيء منها. وكذلك بين الله تعالى حكم الطلاق، فجعله في كل حال واقعا إذا وقع حيث أطلق الله تعالى إيقاعه، وغير واقع حيث لم يطلق الله تعالى إيقاعه، فمن طلق إلى أجل أو أخرج طلاقه أو عتاقه مخرج اليمين فقد تعدى حدود الله تعالى، وليس شيء من ذلك طلاقا واقعا، ولا عتاقا واقعا أصلا، لا حين يوقعه مخالفا لأمر الله تعالى، ولا حيث لا يوقعه أصلا، وهذا بيان لا يحيل على من نصح نفسه وبالله التوفيق. قال أبو محمد ثم نظرنا فيما احتجوا به من قوله عز وجل {لذين ينقضون عهد لله من بعد ميثاقه ويقطعون مآ أمر لله به أن يوصل ويفسدون في لأرض أولئك هم لخاسرون} و {وجعلنا لكم فيها معايش ومن لستم له برازقين} {ولا تشتروا بعهد لله ثمنا قليلا إنما عند لله هو خير لكم إن كنتم تعلمون} {ولا تقربوا مال ليتيم إلا بلتي هي أحسن حتى يبلغ أشده وأوفوا لكيل ولميزان بلقسط لا نكلف نفسا إلا وسعها وإذا قلتم فعدلوا ولو كان ذا قربى

lawful fabricates a lie against Allah, exalted, and is forbidden all of that. It is thus established that these are invalid commitments, none of which is valid. Likewise, Allah, exalted, has explained the ruling on divorce, making it effective in every case when it is pronounced where Allah, exalted, has permitted its pronouncement, and ineffective where Allah, exalted, has not permitted its pronouncement. Thus, whoever pronounces a divorce to take effect at a specified time, or casts his declaration of divorce or emancipation in the form of an oath, has transgressed the limits of Allah, exalted. None of that constitutes an effective divorce or an effective emancipation at all: neither when he pronounces it in opposition to the command of Allah, exalted, nor where he does not pronounce it at all. This is an exposition that will not elude anyone who is sincere with himself. Success comes through Allah. Abu Muhammed said: Then we examined what they adduced as evidence from His words, mighty and majestic: "Those who break Allah's covenant after its confirmation, sever what Allah has commanded to be joined, and spread corruption on earth: those are the losers"; and: "We have made for you therein means of livelihood, and those for whom you are not providers"; and: "Do not exchange Allah's covenant for a paltry price. What is with Allah is better for you, if you know"; and: "Do not approach the orphan's property except in the best manner, until he reaches maturity. Give full measure and weight with equity. We burden no soul beyond its capacity. When you speak, be just, even if it concerns a relative; and fulfill Allah's covenant. That is what He has enjoined upon you, so that you may take heed." We found these verses to provide the clearest exposition of the correctness of our position: "Praise belongs to Allah, Lord of the worlds." For Allah's covenant is precisely something ascribed to Allah, exalted, and nothing may be ascribed to Allah, mighty and majestic, except what He has commanded, not what He has forbidden. Whatever is contrary to this is the covenant of Iblis, not the covenant of Allah, exalted. Whoever ascribes it to Allah, exalted, has lied against Him. Then we examined their argument from the words of Allah, exalted: "If you fear treachery from a people, cast their covenant back to them on equal terms. Indeed, Allah does not love the treacherous." We found this to be evidence for us against them, because Allah, exalted, did not command him, peace be upon him, to persist in a covenant with those from whom he

وبعهد الله أوفوا ذلكم وصاكم به لعلكم تذكرون} فوجدنا هذه الآيات في غاية البيان في صحة قولنا {لحمد لله رب لعالمين} لأن عهد الله إنما هو مضاف إلى الله تعالى، ولا يضاف إلى الله عز وجل إلا ما أمر به لا ما نهى عنه. وما كان خلاف هذا فهو عهد إبليس لا عهد الله تعالى، ومن أضافه إلى الله تعالى فقد كذب عليه. ثم نظرنا في احتجاجهم بقول الله تعالى {وإما تخافن من قوم خيانة فنبذ إليهم على سوآء إن لله لا يحب لخائنين} فوجدنا حجة لنا عليهم لأن الله تعالى لم يأمره عليه السلام بالتمادي على عهد من خاف منه خيانة، بل ألزمه تعالى أن ينبذ إليهم عهدهم، فصح أن كل عهد أمر الله عز وجل بنبذه وطرحه، فهو عهد منقوض مرفوض لا يحل التمادي عليه. ثم نظرنا فيما احتجوا به من قول الله عز وجل {ومنهم من عاهد لله لئن آتانا من فضله لنصدقن ولنكونن من لصالحين * فلما آتاهم من فضله بخلوا به وتولوا وهم معرضون * فأعقبهم نفاقا في قلوبهم إلى يوم يلقونه بما أخلفوا لله ما وعدوه وبما كانوا يكذبون} فوجدناه لا حجة لهم فيه، لأن هؤلاء قوم عاهدوا الله عز وجل لئن رزقهم مالا ليصدقن وليكونن من الصالحين، وهذا فرض على كل أحد، لأن الصدقة اسم يقع على الزكاة وعلى التطوع، فواجب حمله على عمومه ما لم يمنع من شيء منه نص، فدخل في ذلك مانع الزكاة وهذه كبيرة، وكذلك سائر فروض المال.

feared treachery. Rather, He, exalted, required him to cast their covenant back to them. It is thus established that every covenant which Allah, mighty and majestic, has commanded to be cast aside and discarded is a covenant annulled and rejected, in which it is unlawful to persist. Then we examined what they adduced as evidence from the words of Allah, mighty and majestic: "Among them are those who made a covenant with Allah: 'If He gives us of His bounty, we shall surely give charity and surely be among the righteous.' But when He gave them of His bounty, they were miserly with it and turned away in aversion. So He caused hypocrisy to follow in their hearts until the day they meet Him, because they broke what they had promised Allah and because they used to lie." We found that this contains no evidence for them, because these were people who made a covenant with Allah, mighty and majestic, that, if He provided them with wealth, they would surely give charity and surely be among the righteous. This is obligatory upon everyone, because charity is a term that applies both to obligatory alms and to voluntary giving. It must therefore be construed in its general scope unless a text excludes some part of it. Thus, someone who withholds obligatory alms is included in this, and that is a major sin; the same applies to all other financial obligations[27][28][29]

L1881–1886 while voluntary charity is excluded from it because it is a vow concerning something he does not yet possess. Likewise, being among the righteous is

وخرج منه صدقة التطوع لأنه نذر فيما لا يملك بعد، وكذلك كون المرء من الصالحين فرض عليه، نذره أو لم ينذره وقد قال تعالى {ولا يحسبن لذين يبخلون بمآ آتاهم لله من فضله هو خيرا لهم بل هو شر لهم سيطوقون ما بخلوا به يوم لقيامة ولله ميراث لسماوات ولأرض ولله بما تعملون خبير} فهذا حكم من بخل بفرائض المال من الزكاة وغيرها، مما جاءت بإيجابه النصوص. حدثنا عبد الله بن يوسف، ثنا أحمد بن فتح، ثنا عبد الوهاب بن عيسى ثنا أحمد بن محمد، ثنا أحمد بن علي، ثنا مسلم بن الحجاج، ثنا زهير بن حرب، ثنا إسماعيل بن إبراهيم هو ابن علية ثنا أيوب هو السختياني عن أبي قلابة، عن أبي المهلب عن عمران بن الحصين أن رسول الله صلى الله عليه وسلم قال لا وفاء لنذر في معصية ولا فيما لا يملك العبد. حدثنا عبد الرحمن بن عبد الله،

[27] **Translator's note (L1876):** The wording وهكذا ما لم يذكر ما ليس في القرآن أو السنة إمضاؤه is syntactically awkward. The translation takes it to extend the argument to unmentioned commitments whose enforcement lacks authorization in the Quran or Sunnah. The supplied أو contains an apparently corrupt وهو أو مخالف لهذا الخبر. The translation renders the intelligible sense, 'while he himself contradicts this report,' without assigning a meaning to the stray word.

[28] **Translator's note (L1879):** The quotation about means of livelihood and those for whom the addressees do not provide appears unrelated to the surrounding discussion of covenants. It is retained as supplied. The supplied لا يحيل is an unusual reading in this context. 'Will not elude' conveys the apparent intended sense; the wording may be corrupt.

[29] **Qur'an references (L1876):** Qur'an 4:34 (An-Nisa); Qur'an 65:1 (At-Talaq); Qur'an 2:27 (Al-Baqarah); Qur'an 13:25 (Ar-Ra'd); Qur'an 15:20 (Al-Hijr); Qur'an 16:95 (An-Nahl); Qur'an 6:152 (Al-An'am); Qur'an 17:34 (Al-Isra); Qur'an 8:58 (Al-Anfal); Qur'an 9:75 (At-Tawbah); Qur'an 9:76 (At-Tawbah); Qur'an 9:77 (At-Tawbah).

obligatory for a person, whether he vows it or does not vow it. Allah Most High has said: {Let those who are miserly with what Allah has given them of His bounty not suppose that it is good for them. Rather, it is bad for them. What they withheld through miserliness will be fastened around their necks on the Day of Resurrection. To Allah belongs the inheritance of the heavens and the earth, and Allah is fully aware of what you do.} This, then, is the ruling concerning someone who is miserly with obligatory financial dues, including obligatory alms and the other dues whose obligation is established by the texts.

Abd Allah ibn Yusuf related to us: Ahmad ibn Fath related to us: Abd al-Wahhab ibn Isa related to us: Ahmad ibn Muhammed related to us: Ahmad ibn Ali related to us: Muslim ibn al-Hajjaj related to us: Zuhayr ibn Harb related to us: Ismail ibn Ibrahim—namely, Ibn Ulayyah—related to us: Ayyub—namely, al-Sakhtiyani—related to us, from Abu Qilabah, from Abu al-Muhallab, from Imran ibn al-Husayn, that the Messenger of Allah ﷺ said: "There is no fulfilling a vow involving disobedience, nor one concerning something the servant does not possess."

Abd al-Rahman ibn Abd Allah related to us: Ibrahim ibn Ahmad related to us: al-Firabri related to us: al-Bukhari related to us: Musa ibn Ismail related to us: Wuhayb related to us: Ayyub related to us, from Ikrimah, from Ibn Abbas, who said: "While the Prophet ﷺ was delivering a sermon, there was a man standing. He asked about him, and they said: 'Abu Israil. He has vowed to stand and not sit down, not seek shade, not speak, and to fast.' The Prophet ﷺ said: 'Tell him to speak, seek shade, sit down, and complete his fast.'"

Through the same chain to al-Bukhari: Abu Asim and Abu Nuaym related to us, both from Malik, from Talhah ibn Abd al-Malik, from al-Qasim ibn Muhammed, from Aishah, Mother of the Believers, who said: "The Prophet ﷺ said: 'Whoever vows to obey Allah, let him obey Him; and whoever vows to disobey Him, let him not disobey Him.'"

Abd Allah ibn Yusuf related to us: Ahmad ibn Fath related to us: Abd al-Wahhab ibn Isa related to us: Ahmad ibn Muhammed related to us: Ahmad

ثنا إبراهيم بن أحمد، ثنا الفربري، ثنا البخاري، ثنا موسى بن إسماعيل، ثنا وهيب، ثنا أيوب عن عكرمة عن ابن عباس قال بينما النبي صلى الله عليه وسلم يخطب إذا برجل قائم فسأل عنه فقالوا أبو إسرائيل نذر أن يقوم ولا يقعد ولا يستظل ولا يتكلم ويصوم فقال النبي صلى الله عليه وسلم مره فليتكلم وليستظل وليقعد وليتم صومه. وبه إلى البخاري، ثنا أبو عاصم وأبو نعيم كلاهما عن مالك، عن طلحة بن عبد الملك، عن القاسم بن محمد عن عائشة أم المؤمنين قالت قال النبي صلى الله عليه وسلم من نذر أن يطيع الله فليطعه ومن نذر أن يعصيه فلا يعصه. حدثنا عبد الله بن يوسف، ثنا أحمد بن فتح، ثنا عبد الوهاب بن عيسى ثنا أحمد بن محمد، ثنا أحمد بن علي، ثنا مسلم بن الحجاج، ثنا ابن أبي عمر العدني، ثنا مروان بن معاوية الفزاري ثنا حميد حدثني ثابت عن أنس أن نبي الله صلى الله عليه وسلم رأى شيخا يتهادى بين ابنيه فقال ما بال هذا؟ قالوا: نذر أن يمشي، قال: إن الله عن تعذيب هذا لنفسه لغني وأمره أن يركب. ثم نظرنا فيما احتجوا به من قول رسول الله صلى الله عليه وسلم إن إخلاف الوعد خصلة من خصال النفاق فوجدناهم لا حجة لهم فيه. أول ذلك الحنفيين والمالكيين المخالفين لنا في كثير من هذا الباب مع عظيم تناقضهم في ذلك مجمعون على أن من قال لآخر: لأهبن لك غدا دينارا، أو سأهبك اليوم هذا الثوب، وما أشبه هذا، فإنه لا يقضي عليه بشيء من ذلك عندهم، فهم أول تارك لما احتجوا به، وأما نحن فإننا رأينا الله عز وجل قد أسقط الحكم عمن وعد آخر أن يعطيه شيئا سماه، وأكد ذلك باليمين بالله تعالى: ثم لم يفعل، فلم يلزمه الله عز وجل إلا كفارة اليمين فقط، لا الوفاء بما وعد، ولم يجعل عليه في ذلك ملامة، ثم وجدنا الله تعالى يقول: {ولا تقولن لشيء إني فاعل ذلك غدا * إلا أن يشآء لله وذكر ربك إذا نسيت وقل عسى أن يهدين

ibn Ali related to us: Muslim ibn al-Hajjaj related to us: Ibn Abi Umar al-Adani related to us: Marwan ibn Muawiyah al-Fazari related to us: Humayd related to us: Thabit related to me, from Anas, that the Prophet of Allah ﷺ saw a generous man being supported as he walked between his two sons. He said: "What is the matter with this man?" They said: "He has vowed to walk." He said: "Allah has no need of the torment this man inflicts upon himself," and he ordered him to ride. Then we examined what they adduced as evidence from the statement of the Messenger of Allah ﷺ that breaking a promise is a trait among the traits of hypocrisy, and we found that they had no proof in it. The first point is that the Hanafis and Malikis who disagree with us on much of this subject, despite their great inconsistency in it, unanimously agree that if someone says to another, "I shall certainly give you a dinar tomorrow," or, "I shall give you this garment today," or something similar, no judicial ruling compelling any of that is issued against him according to them. Thus they are the first to abandon what they adduce as evidence.

As for us, we have seen that Allah, Mighty and Majestic, has removed the binding ruling from someone who promises another that he will give him something he specifies, confirms that with an oath by Allah Most High, and then does not do it. Allah, Mighty and Majestic, has imposed upon him only expiation for the oath, not fulfilment of what he promised, and has attached no blame to him in that regard. Then we found Allah Most High saying: {And never say of anything, "I shall do that tomorrow," except that Allah wills. And remember your Lord when you forget, and say, "Perhaps my Lord will guide me to something nearer than this to right guidance."} This establishes that anyone who makes a promise without saying, "If Allah wills," is disobedient to Allah, Mighty and Majestic, and contravenes His command. Since his saying that constitutes disobedience to Allah Most High, it is rejected and without legal effect.

Then we found that if he makes a promise and says, "If Allah wills," he has made Allah Most High's will an exception. We know by necessity that everything Allah Most High wills to occur inevitably occurs. Allah, Mighty and Majestic, has said: {His command, when He desires a thing, is only to say to

ربي لأقرب من هذا رشدا} فصح بهذا أن من وعد وعدا ولم يقل إن شاء الله، فهو عاص لله عز وجل، مخالف لأمره، وإذا كان قوله ذلك معصية لله تعالى فهو مردود غير نافذ. ثم إننا وجدناه إن وعد وقال: إن شاء الله، فقد استثنى مشيئة الله تعالى، وبالضرورة ندري أن كل ما شاء الله تعالى كونه فهو واقع لا محالة، قال الله عز وجل: {إنما أمره إذا أراد شيئا أن يقول له كن فيكون} وأن كل ما لم يكن فإن الله تعالى لم يشأ كونه، فإذا لم يفت هذا الواعد بما وعد ولو يوجبه إلا أن يشاءه الله تعالى، فقد أيقنا ضرورة أن الله تعالى لم يشأ كونه فلم يخالفه عقده، لأنه لم يوجبه إلا بمشيئة الله تعالى لم يشأها عز وجل. فصح بهذا يقينا أن الوعد الذي يكون إخلافه خصلة من خصال النفاق، إنما هو الوعد بما افترض الله تعالى الوفاء به، وألزم فعله وأوجب كونه، كالديون الواجبة، والأمانات الواجب أداؤها، والحقوق المفترضة فقط، لا ما عدا ذلك، فإن هذه الوجوه قد أوجب الله تعالى الوعيد على العاصي في ترك أدائها، وأوقع الملامة على المانع منها، وأمر بأدائها، وإن كان عز وجل لم يرد كون ما لم يكن منها، ولا حجة لنا على الله تعالى، بل لله الحجة البالغة، فلو شاء الله لهداكم أجمعين، ووجدناهم أيضا قد أجمعوا على أن الوصايا أوعاد يعدها الموصي ثم يختلفوا أن له الرجوع عنها إن شاء إلا العتق، فإنهم قد اختلفوا في جواز الرجوع عنه.

it, "Be," and it is.} And everything that has not occurred is something Allah Most High has not willed to occur. Thus, if this promiser does not fulfil what he promised, having made it obligatory only if Allah Most High should will it, we know with necessary certainty that Allah Most High did not will its occurrence. His undertaking therefore has not contravened it, because he made it obligatory only through Allah Most High's will, which He, Mighty and Majestic, did not will. This establishes with certainty that the promise whose breach constitutes a trait among the traits of hypocrisy is exclusively a promise concerning something whose fulfilment Allah Most High has made obligatory, whose performance He has required, and whose occurrence He has prescribed: debts that are due, trusts that must be discharged, and obligatory rights alone, to the exclusion of anything else. For in these matters Allah Most High has prescribed a threat of punishment against the person who disobeys by failing to discharge them, has attached blame to the person who withholds them, and has commanded their discharge, even though He, Mighty and Majestic, did not desire the occurrence of those among them that did not occur. We have no argument against Allah Most High; rather, to Allah belongs the conclusive argument. Had Allah willed, He would have guided you all. We also found that they unanimously agree that testamentary bequests are promises made by the testator; then they disagree that he may

revoke them if he wishes, except for emancipation, concerning which they have disagreed over whether revocation is permissible.[3031323334]

L1887–1898 All of this amounts to their returning to our position and contradicting their own position. As for us, we have not permitted revocation of emancipation stipulated in a testamentary bequest, because it is a binding undertaking that Allah Most High has encouraged and represented as desirable. Anything of this kind may not be revoked, because it is an undertaking that becomes binding when a person commits himself to it. It therefore lapses only through an explicit text, and there is no explicit text permitting its revocation. Deferred emancipation is permissible, unlike deferred gifts and all other deferred contracts, because deferral is a condition, and only what is in the Book of Allah Most High is permissible. Since it is authentically established that the Prophet ﷺ sold a slave whose emancipation had been stipulated to occur upon his owner's death, without disapproving of that stipulation, it is established that emancipation at a specified future time is a condition in the Book of Allah Most High. It is therefore effective and

وهذا كله رجوع منهم إلى قولنا، وتناقض في قولهم: وأما نحن فلم نجز الرجوع في العتق في الوصية، لأنه عقد حض الله تعالى عليه وغبط به، وما كان هكذا فلا يجوز الرجوع فيه، لأنه عقد قد لزم إذا التزمه فلا يسقط إلا بنص، ولا نص في جواز الرجوع فيه، والعتق المؤجل جائز بخلاف الهبات المؤجلة، وسائر العقود المؤجلة، لأن التأجيل شرط فلا يجوز إلا ما في كتاب الله تعالى فلما صح أن النبي صلى الله عليه وسلم باع المدبر ولم ينكر التدبير صح أن العتق إلى أجل شرط في كتاب الله تعالى، فهو نافذ لازم لا رجوع فيه، بخلاف سائر العقود المؤجلة التي لا نص في إجازتها وأما الكلام في قوله صلى الله عليه وسلم كان منافقا خالصا وكانت فيه خصلة من النفاق فإن رسول الله صلى الله عليه وسلم لم يقل فيه إنه يكون كافرا والمنافق أصله من نافقاء اليربوع، وهو باب يعده اليربوع في جحره مخفيا مغطى بالتراب، فلما كان المسر للكفر، المظهر للإيمان، يبطن غير ما يظهر، سمي منافقا لما ذكرناه، فليس كل منافق كافرا، إنما المنافق الكافر الذي يسر الكفر ويظهر الإيمان، وأما من أسر شيئا ما، وأظهر غيره ففعله نفاق وليس كفرا، وهو بذلك الفعل منافق لا كافر، فلما كان من إذا عاهد غدر، وإذا خاصم فجر، وإذا وعد أخلف، وإذا ائتمن خان، يسرون خلاف ما يظهرون، ويقولون ما لا يفعلون، كان فعلهم ذلك نفاقا، وكانوا بذلك منافقين، ومما يصح هذا: أن المرتد عن الإسلام إلى الكفر حكمه القتل، وهؤلاء المذكورون من المخاصم الفاجر، والواعد المخلف، والمعاهد الغادر، والمؤتمن الخائن، والكذاب في حديثه، لا قتل عليهم، لأنه لا نص في قتلهم، ولا قال به أحد فضلا عن أن يكون فيه إجماع. فصح ما قلناه. والحمد لله رب العالمين. ثم نظرنا فيما احتجوا به من قول رسول الله صلى الله عليه وسلم أن لكل غادر لواء يوم القيامة فهو داخل في هذا الخبر

[30] **Translator's note (L1882):** The supplied reading سخيا means "a generous man." In this context it appears to be a corruption of شيخا, "an old man"; the translation preserves the supplied reading.

[31] **Translator's note (L1885):** The wording لم يفت هذا الواعد بما وعد ولو يوجبه is corrupt or defective. The translation gives the contextually indicated sense, "does not fulfil ... having made it obligatory only," but this requires reading something like لم يفِ ... ولم يوجبه rather than the supplied wording. Literally, لم يفت suggests "did not pass/miss," while ولو means "even if." The pronoun in فلم يخالفه عقده, rendered "His undertaking therefore has not contravened it," has an unclear antecedent in the supplied text. The phrase لم يشأها, rendered "which ... did not will," grammatically refers back to "will"; its awkwardness is retained.

[32] **Translator's note (L1886):** The supplied ثم يختلفوا, translated "then they disagree," is grammatically defective and conflicts with the ensuing exception and argument. A missing negative, giving ثم لم يختلفوا, "then they did not disagree," appears likely, but has not been silently inserted.

[33] **Hadith references (L1881):** Sahih al-Bukhari 6696; Sahih al-Bukhari 6700; Mishkat al-Masabih 3427.

[34] **Qur'an references (L1881):** Qur'an 3:180 (Ali 'Imran); Qur'an 18:23 (Al-Kahf); Qur'an 18:24 (Al-Kahf); Qur'an 36:82 (Ya-Sin).

binding, with no possibility of revocation, unlike all other deferred contracts for whose permissibility there is no explicit text.

As for discussing his ﷺ statements, "He is a pure hypocrite," and, "He has a trait of hypocrisy," the Messenger of Allah ﷺ did not say in them that such a person becomes an unbeliever. The word "hypocrite" derives originally from the jerboa's concealed exit: an opening the jerboa prepares in its burrow, hidden and covered with earth. Since someone who conceals unbelief while displaying faith inwardly harbours something other than what he displays, he is called a hypocrite for the reason we have mentioned. Thus, not every hypocrite is an unbeliever. The hypocrite who is an unbeliever is specifically the one who conceals unbelief and displays faith. As for someone who conceals something of any kind and displays something else, his action is hypocrisy, not unbelief; through that action he is a hypocrite, not an unbeliever. Thus, since those who betray when they make a covenant, act wickedly when they dispute, break their promises when they promise, and betray a trust when they are entrusted conceal the opposite of what they display and say what they do not do, that action of theirs is hypocrisy, and through it they are hypocrites. Something that confirms this is that the ruling concerning someone who apostatizes from Islam into unbelief is execution, whereas these people who have been mentioned—the person who acts wickedly in a dispute, the promiser who breaks his promise, the covenant-maker who betrays his covenant, the entrusted person who betrays his trust, and the person who lies in his speech—are not subject to execution, because there is no explicit text prescribing their execution, nor has anyone advocated it, let alone there being a consensus concerning it. Thus what we have said is established, and praise belongs to Allah, Lord of the worlds.

Then we examined what they adduced as evidence from the statement of the Messenger of Allah ﷺ that every betrayer will have a banner on the Day of Resurrection. This falls within the foregoing report. The same applies to his ﷺ statement, reporting from Allah Most High, that He is the adversary of someone who gives a pledge in His name, Most High, and then betrays it. All of this concerns only someone who makes a covenant concerning an obligatory right—a covenant Allah Most High has expressly commanded in

المتقدم وكذلك قوله صلى الله عليه وسلم عن الله تعالى أنه خصم من أعطى به تعالى ثم غدر وإنما ذلك كله فيمن عاهد على حق واجب عهدا أمر الله تعالى به نصا في القرآن أو على لسان رسوله صلى الله عليه وسلم ثم غدر فهذا عظيم جدا وكذلك من وعد بأداء دين واجب عليه، وأداء أمانة قبله، ثم أخلف فهي معصية نعوذ بالله تعالى منها، وليس كذلك من عاهد أو وعد على معصية أو بمعصية، كمن عاهد آخر على الزنى، أو على هدم الكعبة، أو على قتل مسلم، أو على ترك الصلاة، أو على ما ذكرنا قبل من إيجاب ما لم يجب، أو اسقاط ما يجب أو تحريم ما أحل الله تعالى: أو إحلال ما حرم الله تعالى، أو وعد بشيء من ذلك، فهذا كله هو الحرام المفسوخ المردود، وبالله تعالى التوفيق. وهكذا القول فيما احتجوا به من قول رسول الله صلى الله عليه وسلم أحق الشروط أن توفوا به ما استحللتم به الفروج فإنما هذا بلا شك في الشروط التي أمر الله تعالى أن يستحل بها الفروج، من الصداق المباح ملكه الواجب إعطاؤه، والنفقة والكسوة والإسكان والمعاشرة بالمعروف، وتدك المضارة أو التسريح بإحسان لا بما نهى الله تعالى عن أن يستحل به الفروج من الشروط المفسدة من تحليل حرام أو تحريم حلال، أو إسقاط واجب أو إيجاب ساقط. حدثنا عبد الرحمن بن عبد الله بن خالد، ثنا إبراهيم بن أحمد البلخي، ثنا الفربري، ثنا البخاري، ثنا عبيد الله بن موسى، عن زكريا بن أبي زائدة، عن سعد بن إبراهيم بن عبد الرحمن بن عوف، عن أبي سلمة بن عبد الرحمن بن عوف عن أبي هريرة عن النبي صلى الله عليه وسلم قال لا يحل لامرأة أن تسأل طلاق أختها لتستفرغ صحفتها، فإنما لها ما قدر لها. وبه إلى البخاري، ثنا محمد بن عرعرة، عن شعبة، عن عدي بن ثابت، عن أبي حازم عن أبي هريرة قال نهى رسول الله صلى الله عليه وسلم عن التلقي وأن يبتاع المهاجر للأعرابي وأن تشترط المرأة طلاق أختها وذكر باقي الحديث فصح أن اشتراط المرأة

the Quran or through the words of His Messenger ﷺ—and then betrays it. This is exceedingly grave. Likewise, if someone promises to discharge a debt he owes or a trust in his keeping and then breaks his promise, that is disobedience from which we seek refuge in Allah Most High. Such is not the case with someone who makes a covenant or promise concerning or involving disobedience, such as someone who covenants with another to commit unlawful sexual intercourse, demolish the Kaaba, kill a Muslim, abandon prayer, or do what we mentioned previously: impose an obligation where none is obligatory, remove what is obligatory, or prohibit what Allah has made lawful Most High, or permitting what Allah Most High has forbidden, or promises any such thing: all of this is forbidden, annulled, and rejected. Success comes through Allah Most High. The same applies to what they adduce from the statement of the Messenger of Allah ﷺ: "The conditions most deserving of your fulfillment are those through which you have made sexual relations lawful." This undoubtedly concerns only the conditions through which Allah Most High has commanded that sexual relations be made lawful: a bridal payment that may lawfully be owned and must be given; maintenance, clothing, housing, living together honorably, and abandoning harmful treatment; or releasing the wife graciously. It does not concern the invalidating conditions through which Allah Most High has forbidden sexual relations to be made lawful: permitting something forbidden, forbidding something lawful, waiving an obligation, or imposing something that is not obligatory. Abd al-Rahman ibn Abd Allah ibn Khalid related to us: Ibrahim ibn Ahmad related to us al-Balkhi: al-Firabri related to us: al-Bukhari related to us: Ubayd Allah ibn Musa related to us, from Zakariyya ibn Abi Zaʾida, from Saʿd ibn Ibrahim ibn Abd al-Rahman ibn Awf, from Abu Salama ibn Abd al-Rahman ibn Awf, from Abu Hurayra, from the Prophet ﷺ, who said: "It is not lawful for a woman to request her sister's divorce in order to empty her dish, for she will have only what has been decreed for her." Through the same chain to al-Bukhari: Muhammed ibn Arʿara related to us, from Shuʿba, from Adi ibn Thabit, from Abu Hazim, from Abu Hurayra, who said: "The Messenger of Allah ﷺ forbade intercepting incoming traders, an Emigrant purchasing on behalf of a Bedouin, and a woman stipulating her sister's divorce." He mentioned the remainder of the report. Thus it is established that a woman's

في نكاحها طلاق غيرها ممن هي في عصمة الناكح لها، أو طلاق من يتزوجها بعد أن تزوجها باطل وحرام منهي عنه، وشرط مفسوخ فاسد لا يحل عقده ولا إمضاؤه، وصح أن كل نكاح عقد على ما لا يحل فإنه لا يحل، وهو مفسوخ أبدا ولو ولدت فيه عشرات من الأولاد، لأنه عقد بصحة ما لا صحة له، وعلى أنه لا يصح إلا بصحة ما لا يصح فهو لا يصح، وهذا في غاية البيان، والحمد لله رب العالمين وقد صح عن رسول الله صلى الله عليه وسلم من عمل عملا ليس عليه أمرنا فهو رد ثم نظرنا فيما احتجوا به من حديث حذيفة، فوجدناه ساقطا لا يصح سنده، أما من طريق شعبة فهو مرسل، ولا حجة في مرسل، وأما الطريق الأخرى فمن رواية الوليد بن جميع، وهو ساقط مطرح. وأيضا فإن الله تعالى يأبى إلا أن يفضح الكاذبين والكذب في هذا الخبر ظاهر متيقن؛ لأن حذيفة مدني الدار هو وأبوه قبله حليف لبني عبد الأشهل من الأنصار ولم يكن له طريق إلى النبي صلى الله عليه وسلم يؤديه إلى قريش أصلا لأن طريق المدينة إلى رسول الله صلى الله عليه وسلم إذ خرج إلى بدر خلفه لطريق قريش من مكة إلى بدر، فوضع كذب ذلك الحديث يقينا وبالله تعالى التوفيق. ثم لو صح، وهو لا يصح، لكان منسوخا بلا شك لما سنذكره إن شاء الله تعالى في خبر أبي جندل بعد هذا؛ وبالله تعالى نتأيد. ثم نظرنا في الحديث الذي فيه: المسلمون عند شروطهم فوجدناه أيضا قد ثناه أحمد بن محمد الطلمنكي، ثنا محمد بن يحيى بن مفرج، ثنا محمد بن أيوب الصموت الرقي، ثنا أحمد بن عمرو بن عبد الخالق البزار، ثنا عمرو بن علي، ثنا محمد بن خالد، ثنا كثير بن عبد الله بن زيد بن عمرو بن عوف المزني عن أبيه عن جده قال قال رسول الله صلى الله عليه وسلم المسلمون عند شروطهم وبه إلى البزار ثنا محمد بن المثنى، نا محمد بن الحارث، نا محمد بن عبد الرحمن بن البيلماني عن أبيه عن ابن عمر قال قال رسول الله صلى الله عليه وسلم الناس على شروطهم ما

stipulating, in her marriage, the divorce of another woman already married to the man marrying her, or the divorce of a woman whom he marries after marrying her, is invalid, forbidden, and prohibited: an annulled, unsound condition that may neither lawfully be contracted nor implemented. It is also established that every marriage contracted upon something unlawful is itself unlawful and perpetually annulled, even if dozens of children have been born within it. For it was contracted on the validity of something that has no validity, and on the basis that it would be valid only if something invalid were valid; therefore it is invalid. This is utterly clear, and praise belongs to Allah, Lord of all worlds. It has been authentically transmitted from the Messenger of Allah ﷺ: "Whoever performs an act that does not conform to our command, it is rejected." We then examined what they adduced from the report of Hudhayfa and found it untenable, its chain of transmission unauthentic. As for the route through Shuʿba, it is a disconnected report, and a disconnected report supplies no authoritative proof. As for the other route, it is through the transmission of al-Walid ibn Jumayʿ, who is discredited and rejected. Moreover, Allah Most High insists on exposing liars, and the falsehood in this report is evident and certain, because Hudhayfa was a resident of Medina, as his father had been before him, an ally of the Banu Abd al-Ashhal of the Helpers, and he had no route to the Prophet ﷺ that would bring him to Quraysh at all, because the route from Medina to the Messenger of Allah ﷺ, when he set out for Badr, was opposite to Quraysh's route from Mecca to Badr. Thus the fabricated falsehood of that report is certain. Success comes through Allah Most High. Furthermore, even if it were authentic—and it is not authentic—it would undoubtedly have been abrogated, for the reasons we shall mention, if Allah Most High wills, in the report of Abu Jandal below. Through Allah Most High we receive support. We then examined the report containing the words, "Muslims are bound by their conditions," and found that it, too, had been related to us by Ahmad ibn Muhammed al-Talamanki: Muhammed ibn Yahya ibn Mufarrij related to us: Muhammed ibn Ayyub al-Samut al-Raqqi related to us: Ahmad ibn Amr ibn Abd al-Khaliq al-Bazzar related to us: Amr ibn Ali related to us: Muhammed ibn Khalid related to us: Kathir ibn Abd Allah ibn Zayd ibn Amr ibn Awf al-Muzani related to us, from his father, from his grandfather, who said: The Messenger of Allah

وافقوا الحق قال علي: وكل هذا لا يصح منه شيء، أما الطريق الأول ففيها كثير بن زيد وهو هالك تركه أحمد ويحيى، والثاني عن الوليد بن رباح وهو مجهول، والأخرى كثير بن عبد الله، وهو كثير بن زيد نفسه، مرة نسب إلى أبيه ومرة إلى جده، ثم أبوه أيضا نحوه والثالثة من طريق محمد بن عبد الرحمن بن البيلماني وهو ضعيف، ثم لو صح، وهو لا يصح لكان حجة لنا عليهم لأن فيه إضافة النبي صلى الله عليه وسلم الشروط إلى المسلمين ولا شروط للمسلمين إلا الشروط التي أباح الله تعالى في القرآن أو السنة الثابتة عقدها، لا شروط للمسلمين غيرها، لأن المسلمين لا يستجيزون إحداث شروط لم يأذن الله تعالى بها هذه شروط الشيطان، وأتباعه لا شروط المسلمين لقول رسول الله صلى الله عليه وسلم كل محدثة بدعة وكل بدعة ضلالة والضلالة في النار. والعجب كله من احتجاج الحنفيين والمالكيين بهذه الأخبار، وهم أول مخالف لها. فيقولون: كل شرط في نكاح فهو باطل ما لم يعقده بيمين، ثم يتناقضون في اليمين فيجعلون يمينا ما لم يجعل الله تعالى قط يمينا ولا رسول الله صلى الله عليه وسلم فأي تناقض أكثر من هذا وأيضا ففي الخبر المذكور: الناس على شروطهم ما وافقوا الحق ولعمري لو صح هذا لكان من عظيم حجتنا عليهم، لأنه أبطل كل شرط لم يوافق الحق، ولا يوافق الحق شيء إلا أن يكون في القرآن أو في حكم النبي صلى الله عليه وسلم وهكذا القول فيما روي عن عمر الصلح جائز بين المسلمين، إلا صلحا أحل حراما أو حرم حلالا فعاد كل ما شغبوا فيه من صحيح ثابت أو باطل زائف حجة لنا عليهم. والحمد لله رب العالمين. ثم نظرنا في حديث أبي جندل فوجدناه لا حجة لهم فيه لوجوه ستة أولها أنه لم يكن عقد للنبي صلى الله عليه وسلم بعد رده من جاء من قريش إليه إذ جاء أبو جندل كما ثنا عبد الرحمن بن عبد الله بن خالد، نا إبراهيم بن أحمد، حدثنا الفربري، ثنا البخاري، ثنا عبد الله بن محمد هو المسندي نا عبد الرزاق، حدثنا معمر، أخبرني

ﷺ said: “Muslims are bound by their conditions.” Through the same chain to al-Bazzar: Muhammed ibn al-Muthanna related to us: Muhammed ibn al-Harith related to us: Muhammed ibn Abd al-Rahman ibn al-Baylamani related to us, from his father, from Ibn Umar, who said: The Messenger of Allah ﷺ said: “People are bound by their conditions insofar as they conform to the truth.” Ali said: None of any of this is authentic. As for the first route, it contains Kathir ibn Zayd, who is utterly unreliable; Ahmad and Yahya abandoned him. The second is from al-Walid ibn Rabah, who is unknown. The other contains Kathir ibn Abd Allah, who is Kathir ibn Zayd himself: on one occasion he is identified through his father, and on another through his grandfather. His father, moreover, is much the same. The third is through Muhammed ibn Abd al-Rahman ibn al-Baylamani, who is weak. Furthermore, even if it were authentic—and it is not authentic—it would be proof for us against them, because in it the Prophet ﷺ attributes the conditions to Muslims. Muslims have no conditions except those whose contracting Allah Most High has permitted in the Quran or the established Sunna. Muslims have no conditions other than these, because Muslims do not consider it permissible to introduce conditions that Allah Most High has not authorized them to impose. These are the conditions of Satan and his followers, not the conditions of Muslims, because the Messenger of Allah ﷺ said: “Every newly introduced matter is an innovation, every innovation is misguidance, and misguidance is in the Fire.” What is altogether astonishing is that the Hanafis and Malikis adduce these reports even though they are the first to contradict them. They say: “Every condition in a marriage is invalid unless one binds it with an oath.” Then they contradict themselves concerning the oath, treating as an oath something that neither Allah Most High nor His Messenger ﷺ ever made an oath. What contradiction could be greater than this? Moreover, the aforementioned report says: “People are bound by their conditions insofar as they conform to the truth.” By my life, if this were authentic, it would constitute powerful proof for us against them, because it invalidates every condition that does not conform to the truth, and nothing conforms to the truth unless it is in the Quran or in a ruling of the Prophet ﷺ. The same applies to what is related from Umar: “Amicable settlement is permissible among Muslims, except a settlement that permits something

الزهري، أنا عروة بن الزبير، عن المسور بن مخرمة، ومروان يصدق كل واحد منهما حديث صاحبه فذكر حديث الحديبية وفيه: فقال المسلمون: سبحان الله كيف يرد إلى المشركين، وقد جاء مسلما، فبينما هو كذلك إذ دخل أبو جندل بن سهيل بن عمرو يرسف في قيوده، قد خرج من أسفل مكة حتى رمى بنفسه بين أظهر المسلمين، فقال سهيل: هذا يا محمد أول ما أقاضيك عليه أن ترده إلي فقال صلى الله عليه وسلم إنا لم نفض الكتاب بعد قال فوالله إذا لا أصالحك على شيء أبدا فقال النبي صلى الله عليه وسلم فأجزه لي فقال ما أنا بمجيز ذلك لك قال بلى فافعل ما أنا بفاعل. قال مكرز: بلى قد أجزناه لك، فهذا أمر لا يقول به المخالفون لنا أن يرد إليهم من جاء منهم قبل أن يتم التعاقد على ذلك، فكيف يحتجون بما لا يحل عندهم، أليس هذا من البلايا والفضائح؟. والوجه الثاني: أنه كما ترى لم يرده عليه السلام إلا حتى أجازه من لا تقدر قريش على معارضته، وهو من رهط سهيل بن عمرو؛ لأنه سهيل بن عمرو بن عبد شمس بن عبد ود بن نصر بن مالك بن حسل بن عامر بن لؤي، والذي أجار أبا جندل هو مكرز بن حنفص بن الأخيف بن علقمة بن عبد الحارث بن منقذ بن عمرو بن معيص بن عامر بن لؤي من سادات بني عامر بن لؤي

forbidden or forbids something lawful." Thus everything with which they have raised contentious objections, whether sound and established or invalid and spurious, turns out to be proof for us against them. Praise belongs to Allah, Lord of all worlds. We then examined the report of Abu Jandal and found that it supplies them with no proof, for six reasons. The first is that, when Abu Jandal arrived, no agreement had yet been concluded binding the Prophet ﷺ to return anyone from Quraysh who came to him. This is as Abd al-Rahman ibn Abd Allah ibn Khalid related to us: Ibrahim ibn Ahmad related to us: al-Firabri related to us: al-Bukhari related to us: Abd Allah ibn Muhammed—namely, al-Musnadi—related to us: Abd al-Razzaq related to us: Maʿmar related to us: al-Zuhri informed me: Urwa ibn al-Zubayr informed us, from al-Miswar ibn Makhrama and Marwan, each confirming the other's account. He then mentioned the report of al-Hudaybiyya, which includes: The Muslims said, "Glory be to Allah! How can he be returned to the polytheists when he has come as a Muslim?" While matters stood thus, Abu Jandal ibn Suhayl ibn Amr came in, dragging his shackles. He had emerged from the lower part of Mecca until he cast himself into the midst of the Muslims. Suhayl said: "This man, Muhammed, is the first matter on which I require you to honor our agreement: you must return him to me." He ﷺ said: "We have not yet concluded the document." He said: "Then, by Allah, I shall never make peace with you on anything." The Prophet ﷺ said: "Then grant me an exception for him." He said: "I will not grant you that." He said: "Yes, do so." "I will not do so." Mikraz said: "Yes, we have granted you an exception for him." This is something our opponents do not uphold: that someone from their people who comes should be returned to them before the agreement to that effect has been completed. How, then, can they adduce something that is unlawful according to them? Is this not among the calamities and disgraces? The second reason is that, as you see, he, peace be upon him, did not return him until someone whom Quraysh could not oppose had granted him protection. He belonged to the clan of Suhayl ibn Amr, for the latter was Suhayl ibn Amr ibn Abd Shams ibn Abd Wudd ibn Nasr ibn Malik ibn Hisl ibn Amir ibn Luʾayy. The person who granted Abu Jandal protection was Mikraz ibn Hanfas ibn al-Akhyaf ibn Alqama ibn Abd

al-Harith ibn Munqidh ibn Amr ibn Muʿays ibn Amir ibn Luʾayy, one of the leading men of the Banu Amir ibn Luʾayy.[35][36][37][38][39][40]

L1899–1906 Thus their reliance upon the Prophet's ﷺ returning Abu Jandal, since he returned him only under protection and a guarantee of safety. The third point is that the Prophet ﷺ did not return anyone to the unbelievers among the Muslims during that period without Allah, Mighty and Majestic, having informed him that they would not be subjected to trials in their religion or their worldly affairs, and that they would assuredly escape. Thus, Abd Allah

فبطل تعلقهم برد النبي صلى الله عليه وسلم أبا جندل إذ لم يرده إلا بجوار وأمان

والوجه الثالث أن النبي صلى الله عليه وسلم لم يرد إلى الكفار أحدا من المسلمين في تلك المدة، إلا وقد أعلمه الله عز وجل أنهم لا يفتنون في دينهم، ولا في دنياهم، وأنهم سينجون ولا بد. كما حدثنا عبد الله بن يوسف، نا أحمد بن فتح، نا عبد الوهاب بن عيسى، حدثنا أحمد بن محمد، نا أحمد بن علي، نا مسلم بن الحجاج، نا أبو بكر بن أبي شيبة، نا عفان، نا حماد بن سلمة عن ثابت عن أنس أن قريشا صالحوا النبي صلى الله عليه وسلم فاشترطوا على النبي صلى الله عليه وسلم أن من جاء منكم لم نرده عليكم ومن جاء منا رددتموه علينا، قالوا: يا رسول الله: أتكتب هذا؟ قال: نعم إنه من ذهب منا إليهم فأبعده الله، ومن جاء منهم إلينا فسيجعل الله له فرجا ومخرجا. قال أبو محمد قد قال الله عز وجل واصفا لنبيه صلى الله عليه وسلم {وما ينطق عن لهوى * إن هو إلا وحي يوحى} فأيقنا أن إخبار النبي صلى الله عليه وسلم بأن من جاءه من عند كفار قريش مسلما فسيجعل الله له فرجا ومخرجا: وحي من عند الله صحيح لا داخلة فيه، فصحت العصمة بلا شك من مكروه الدنيا والآخرة لمن أتاه منهم حتى تتم نجاته من أيدي الكفار، لا يستريب في ذلك مسلم يحقق النظر. وهذا أمر لا يعلمه أحد من الناس بعد النبي صلى الله عليه وسلم ولا يحل لمسلم أن يشترط هذا الشرط ولا أن يفي به إن شرطه، إذ ليس عنده من علم الغيب ما أوحى الله تعالى به إلى رسوله، وبالله تعالى التوفيق والوجه الرابع أن رسول الله صلى الله عليه وسلم لم يرد من رد المسلمين إلى المشركين إلا أحرارا إلى أهلهم وآبائهم وقومهم، والمخالفون في هذا لا يردون المسلمين الأحرار إلا عبيدا إلى الكفار الذين يعذبونهم أشد العذاب، ويأتون

[35] **Translator's note (L1887):** The Arabic etymological argument connects منافق, "hypocrite" (munafiq), with نافقاء, the jerboa's concealed exit (nafiqa). "A slave whose emancipation had been stipulated to occur upon his owner's death" renders المدبر; "that stipulation" renders التدبير, the corresponding legal arrangement.

[36] **Translator's note (L1890):** The opening "Most High" completes the reference to Allah in the preceding segment. The transcription reads "وتدك المضارة"; "تدك" is unclear here. "Abandoning harmful treatment" follows the likely intended reading "وترك المضارة," but the supplied wording is corrupt.

[37] **Translator's note (L1891):** "Disconnected report" renders "mursal," technically a report in which a Successor attributes a statement directly to the Prophet without naming the intervening transmitter. The first report's "her sister" denotes another woman in the community; "empty her dish" preserves the supplied metaphor. The second report explicitly reads "purchasing" and "the Emigrant"; these have been retained rather than replaced with wording from other versions of the report.

[38] **Translator's note (L1894):** The supplied "خلفه" is awkward in the route comparison; "opposite to" follows its apparent sense here. The phrase "فوضع كذب ذلك الحديث يقينا" is textually awkward. The translation preserves its apparent assertion that the report's fabrication is certain. The author explicitly identifies Kathir ibn Abd Allah with Kathir ibn Zayd. That identification is retained as his claim. The enumeration of transmission routes refers to routes not all explicitly presented in this segment; it has been preserved as supplied.

[39] **Translator's note (L1895):** The initial "بها" completes "has not authorized" in the preceding segment; the English makes that continuation explicit.

[40] **Translator's note (L1898):** The supplied "لم نفض الكتاب" across the segment boundary is unusual; "have not yet concluded the document" renders its apparent meaning without substituting a different Arabic wording. The exchange omits explicit speaker labels for "Yes, do so" and "I will not do so"; the translation preserves the exchange without adding labels. The report uses "أجزناه/أجزه" for granting an exception, while the author subsequently uses "أجار" for granting protection. The distinction is retained. The genealogy explicitly reads "حنفص," rendered "Hanfas"; it has not been silently replaced with another spelling.

ibn Yusuf related to us: Ahmad ibn Fath related to us: Abd al-Wahhab ibn Isa related to us: Ahmad ibn Muhammed related to us: Ahmad ibn Ali related to us: Muslim ibn al-Hajjaj related to us: Abu Bakr ibn Abi Shayba related to us: Affan related to us: Hammad ibn Salama related to us, from Thabit, from Anas, that Quraysh made peace with the Prophet ﷺ and stipulated to the Prophet ﷺ: "Whoever comes from you, we shall not return him to you; and whoever comes from us, you shall return him to us." They said: "Messenger of Allah, will you put this in writing?" He said: "Yes. Whoever goes from us to them, may Allah banish him; and whoever comes from them to us, Allah will provide him with relief and a way out." Abu Muhammed said: Allah, Mighty and Majestic, has said, describing His Prophet ﷺ: {Nor does he speak from desire. It is nothing but revelation revealed.} We therefore know with certainty that the Prophet's ﷺ statement that whoever came to him as a Muslim from the unbelievers of Quraysh would be provided by Allah with relief and a way out was authentic revelation from Allah, with no defect in it. Thus, protection from harm in this world and the Hereafter was established beyond doubt for whoever came to him from among them, until his deliverance from the hands of the unbelievers was complete. No Muslim who examines the matter thoroughly doubts this. This is something that no person after the Prophet ﷺ knows. It is not lawful for a Muslim to stipulate this condition, or to fulfill it if he has stipulated it, since he does not possess the knowledge of the unseen that Allah Most High revealed to His Messenger. Success comes through Allah Most High. The fourth point is that those Muslims whom the Messenger of Allah ﷺ returned to the polytheists were returned only as free persons to their families, fathers, and people, whereas our opponents on this matter return free Muslims only as slaves to unbelievers who subject them to the severest torment, commit the forbidden sexual outrage against the women, and sometimes kill them. We do not know how a Muslim can regard such a thing lightly. The fifth point is that Abu Said al-Jafari related to us, saying: Muhammed ibn Ali ibn al-Udfuwi related to us: Abu Jafar Ahmad ibn Muhammed ibn Ismail al-Nahhas, from Ahmad ibn Shuayb, from Said ibn Abd al-Rahman: Sufyan related to us, from al-Zuhri. Sufyan said: Mamar subsequently confirmed it for me, from al-Zuhri, from Urwa ibn al-Zubayr, who said that al-Miswar ibn

الفاحشة المحرمة في النساء وربما قتلوهم، فما ندري كيف يستسهل مثل هذا مسلم.

والوجه الخامس: أن أبا سعيد الجعفري حدثنا قال: نا محمد بن علي بن الأدفوي، نا أبو جعفر أحمد بن محمد بن إسماعيل النحاس، عن أحمد بن شعيب، عن سعيد بن عبد الرحمن، نا سفيان، عن الزهري قال سفيان: وثبتني معمر بعد ذلك عن الزهري عن عروة بن الزبير قال: إن المسور بن مخرمة ومروان أخبراه بخبر الحديبية فذكر الحديث، وفي آخره خروج أبي بصير وهو عتبة بن أسيد بن جارية الثقفي حليف بني نوفل بن عبد مناف، إلى سيف البحر، وانفلات أبي جندل بن سهيل إليه قال: فجعل لا يخرج رجل من قريش قد أسلم إلا لحق بأبي بصير، حتى اجتمعت منهم عصابة، فوالله ما يسمعون بعير لقريش تخرج إلى الشام إلا اعترضوا لهم فيقتلونهم ويأخذون أموالهم فأرسلت قريش إلى النبي صلى الله عليه وسلم يناشدونه بالله وبالرحم إلا أرسل إليهم فمن أتاه فهو آمن فأرسل النبي صلى الله عليه وسلم إليهم قال أبو محمد فهذا أبو بصير وأبو جندل ومن معهما من المسلمين، قد سفكوا دماء قريش المعاهدين لرسول الله صلى الله عليه وسلم وأخذوا أموالهم ولم يحرم ذلك عليهم ولا كانوا بذلك عصاة ولا شك في أن رسول الله صلى الله عليه وسلم كان قادرا على منعهم من ذلك لو نهاهم فلم يفعل، فصح يقينا أنه عهد منسوخ بخلاف ما يقوله المخالفون اليوم، وإنه إنما لزم من كان بالمدينة فقط دون من كان خارجا عنها. والوجه السادس: وهو القاطع لكل شغب، والحاسم لكل علقة: وهو صحة اليقين بأن ذلك العهد منسوخ ممنوع منه محرم عقده في الأبد، مما في سورة براءة من قول الله تعالى {فإذا نسلخ لأشهر لحرم فقتلوا لمشركين حيث وجدتموهم وخذوهم وحصروهم وقعدوا لهم كل مرصد فإن تابوا وأقاموا لصلاة وآتوا لزكاة فخلوا سبيلهم إن لله غفور رحيم} وبقوله تعالى أيضا في سورة براءة {قاتلوا لذين لا يؤمنون بلله ولا بليوم لآخر ولا يحرمون ما حرم لله ورسوله

Makhrama and Marwan informed him of the account of al-Hudaybiyya. He then recounted the report, at the end of which was Abu Basir's departure for the seashore—he was Utba ibn Usayd ibn Jariya al-Thaqafi, an ally of Banu Nawfal ibn Abd Manaf—and Abu Jandal ibn Suhayl's escape to join him. He said: "Thereafter, whenever a man of Quraysh who had embraced Islam left, he joined Abu Basir, until a band of them had gathered. By Allah, whenever they heard of a caravan belonging to Quraysh setting out for Syria, they intercepted them, killing them and taking their property. Quraysh therefore sent to the Prophet ﷺ, imploring him by Allah and by the ties of kinship to send for them, with anyone who came to him being safe. The Prophet ﷺ then sent for them." Abu Muhammed said: Here, then, are Abu Basir, Abu Jandal, and the Muslims with them: they shed the blood of members of Quraysh who had a treaty with the Messenger of Allah ﷺ and took their property. This was not forbidden to them, nor did they thereby become disobedient sinners. There is no doubt that the Messenger of Allah ﷺ could have prevented them from doing this had he forbidden them, yet he did not do so. It is therefore established with certainty that this was an abrogated treaty, contrary to what our opponents say today, and that it bound only those who were in Medina, to the exclusion of those outside it. The sixth point, which puts an end to every contentious objection and severs every attachment to this argument, is the firmly established certainty that that treaty is abrogated, prohibited, and forever forbidden to conclude, on the basis of what is in Surat Baraʾa, in the words of Allah Most High: {Then, when the sacred months have elapsed, kill the polytheists wherever you find them, seize them, besiege them, and lie in wait for them at every place of ambush. But if they repent, establish prayer, and give the obligatory alms, then let them go their way. Indeed, Allah is forgiving, merciful}; and also His words, Most High, in Surat Baraʾa: {Fight those who do not believe in Allah or in the Last Day, who do not forbid what Allah and His Messenger have forbidden, and who do not profess the religion of truth, from among those who were given the Scripture, until they pay the poll tax out of hand, while being humbled}; and also His words, Most High, in Surat Baraʾa: {And if any of the polytheists seeks your protection, grant him protection until he hears the words of Allah; then convey him to his place of safety. That is

ولا يدينون دين لحق من لذين أوتوا لكتاب حتى يعطوا لجزية عن يد وهم صاغرون} وبقوله تعالى أيضا في سورة براءة {وإن أحد من لمشركين ستجارك فأجره حتى يسمع كلام لله ثم أبلغه مأمنه ذلك بأنهم قوم لا يعلمون} وبقوله تعالى أيضا في سورة براءة {كيف يكون للمشركين عهد عند لله وعند رسوله إلا لذين عاهدتم عند لمسجد لحرام فما ستقاموا لكم فستقيموا لهم إن لله يحب لمتقين}

because they are a people who do not know}; and also His words, Most High, in Surat Bara'a: {How can the polytheists have a treaty with Allah and with His Messenger, except those with whom you made a treaty at the Sacred Mosque? So long as they remain true to you, remain true to them. Indeed, Allah loves those who are mindful of Him.}[41][42][43][44]

L1907–1912 Surat Bara'a was the last surah revealed, as Abd al-Rahman ibn Abd Allah ibn Khalid related to us: Ibrahim ibn Ahmad al-Balkhi related to us: al-Firabri related to us: al-Bukhari related to us: Abu al-Walid—that is, al-Tayalisi—related to us: Shuba related to us, from Abu Ishaq al-Sabii, from al-Bara ibn Azib, who said: "The last verse revealed was: {They ask you for a ruling. Say: Allah gives you a ruling concerning one who leaves neither parent nor child. If a man dies having no child, but having a sister, she shall have half of what he leaves; and he inherits from her if she has no child. If there are two sisters, they shall have two-thirds of what he leaves. If there are brothers and sisters, male and female, the male shall have the equivalent of the share of two females. Allah makes this clear to you lest you go astray, and Allah knows all things.} And the last surah revealed was Bara'a." Abu Muhammed said: Through it the Prophet ﷺ delivered his final declaration to the unbelievers, in the year when Abu Bakr al-Siddiq led the people on pilgrimage, three years and one month after al-Hudaybiyya, at which the affair of Abu Jandal occurred. For al-Hudaybiyya took place in Dhu al-Qada in the sixth year after the Emigration, before Khaybar. When the following Dhu al-Qada

وسورة براءة آخر سورة أنزلت كما حدثنا عبد الرحمن بن عبد الله بن خالد، ثنا إبراهيم بن أحمد البلخي، ثنا الفربري، ثنا البخاري، نا أبو الوليد هو الطيالسي، ثنا شعبة عن أبي إسحاق السبيعي عن البراء بن عازب قال آخر آية أنزلت {يستفتونك قل الله يفتيكم في لكلالة إن مرؤ هلك ليس له ولد وله أخت فلها نصف ما ترك وهو يرثها إن لم يكن لها ولد فإن كانتا ثنتين فلهما لثلثان مما ترك وإن كانوا إخوة رجالا ونسآء فللذكر مثل حظ لأنثيين يبين الله لكم أن تضلوا والله بكل شيء عليم} وآخر سورة نزلت براءة قال أبو محمد وبها عهد النبي صلى الله عليه وسلم آخر عهده إلى الكفار عام حجة أبي بكر الصديق بالناس، وبعد الحديبية التي كانت فيها قصة أبي جندل بثلاثة أعوام وشهر، لأن الحديبية كانت في ذي القعدة عام ست من الهجرة قبل خيبر، فلما كان ذو القعدة المقبل بعد الحديبية بعام كامل اعتمر رسول الله صلى الله عليه وسلم عمرة القضاء سنة سبع من الهجرة ثم كان فتح مكة في رمضان سنة ثمان من الهجرة بعد عمرة القضاء بعام غير شهرين، وحج تلك السنة عتاب بن أسيد بالمسلمين ثم حج أبو بكر في ذي الحجة سنة تسع من الهجرة بعد الفتح بعام وشهرين، كما ثنا حمام، ثنا الأصيلي، ثنا المروزي، ثنا الفربري، ثنا البخاري، ثنا سعيد بن عفير، نا الليث، نا عقيل عن ابن شهاب، أخبرني حميد بن عبد الرحمن أن أبا هريرة قال: بعثني أبو بكر في تلك الحجة وذكر الحديث وفيه ثم أردف النبي صلى الله عليه وسلم بعلي بن أبي طالب وأمره أن يؤذن ببراءة قال أبو هريرة: فأذن معنا علي رضي الله عنه يوم النحر في أهل منى ببراءة وألا يحج بعد العام مشرك، ولا يطوف بالبيت عريان. فصح باليقين أنه لا

[41] **Translator's note (L1901):** The opening of the Quranic quotation, corresponding to 53:3–4, has a corrupt spelling of the expression meaning "from desire." The intended wording is identifiable and is reflected in the translation.

[42] **Translator's note (L1905):** The Quranic quotations, corresponding to 9:5, 9:29, and the beginning of 9:6, contain numerous missing initial alifs and malformed spellings. Their identifiable wording is reflected in the translation. "Out of hand" preserves the compact wording of the expression concerning payment of the poll tax; the Arabic permits interpretations involving direct payment, ability to pay, or submission.

[43] **Translator's note (L1906):** The quotation corresponding to 9:7 contains several missing initial alifs and malformed spellings. Its identifiable wording is reflected in the translation.

[44] **Qur'an references (L1899):** Qur'an 53:4 (An-Najm); Qur'an 9:5 (At-Tawbah); Qur'an 9:6 (At-Tawbah); Qur'an 9:7 (At-Tawbah).

came, a full year after al-Hudaybiyya, the Messenger of Allah ﷺ performed the compensatory lesser pilgrimage, in the seventh year after the Emigration. Then the conquest of Mecca took place in Ramadan in the eighth year after the Emigration, one year less two months after the compensatory lesser pilgrimage. Attab ibn Asid led the Muslims on pilgrimage that year. Abu Bakr then performed the pilgrimage in Dhu al-Hijja in the ninth year after the Emigration, one year and two months after the conquest, as Hammam related to us: al-Asili related to us: al-Marwazi related to us: al-Firabri related to us: al-Bukhari related to us: Said ibn Ufayr related to us: al-Layth related to us: Uqayl related to us, from Ibn Shihab: Humayd ibn Abd al-Rahman informed me that Abu Hurayra said: "Abu Bakr sent me on that pilgrimage." He recounted the report, which includes: "Then the Prophet ﷺ sent Ali ibn Abi Talib after him and ordered him to proclaim Baraʾa." Abu Hurayra said: "Ali, may Allah be pleased with him, proclaimed Baraʾa with us on the Day of Sacrifice among the people at Mina, and proclaimed that after that year no polytheist was to perform the pilgrimage and no naked person was to circumambulate the House." It is thus established with certainty that it is not lawful to make any treaty with a polytheist or conclude any agreement with him except on the basis of Islam alone, or on the basis of payment of the poll tax and submission to humiliation if he belongs to the People of the Scripture. It is established with certainty that every treaty, agreement, or condition concluded with them, covenanted with them, or stipulated for them contrary to what we have mentioned is invalid and rejected. It is not lawful to conclude it or to fulfill it if concluded; rather, it must be annulled. The first thing Allah, Mighty and Majestic, abrogated from the treaty made on the day of al-Hudaybiyya was the return of women, as Hammam ibn Ahmad related to us: al-Asili related to us: al-Marwazi related to us: al-Firabri related to us: al-Bukhari related to us: Abd Allah ibn Muhammed; ʿAbd al-Razzaq narrated to us; Maʿmar narrated to us, saying: Al-Zuhri informed me; ʿUrwah informed me, from al-Miswar ibn Makhramah and Marwan. He then related the account of al-Hudaybiyyah and Suhayl's stipulation, which we have mentioned. It includes: Then believing women came, and Allah, mighty and majestic, revealed: {O you who believe, when believing women come to you as emigrants, examine them. Allah knows best their faith. Then, if you know

يحل أن يعاهد مشرك عهدا، ولا يعاقد عقدا إلا على الإسلام فقط، أو على غرم بالجزية والصغار إن كان كتابيا وصح يقينا أن كل عهد أو عقد أو شرط عقد معهم أو عوهدوا عليه أو شرط لهم بخلاف ما ذكرنا، فهو باطل مردود، لا يحل عقده ولا الوفاء به إن عقد، بل يفسخ ولا بد. وأول ما نسخ الله عز وجل من العهد الذي كان يوم الحديبية، فرد النساء كما حدثنا حمام بن أحمد، ثنا الأصيلي، ثنا المروزي، ثنا الفربري، ثنا البخاري، ثنا عبد الله بن محمد، ثنا عبد الرزاق، ثنا معمر قال: أخبرني الزهري، أخبرني عروة، عن المسور بن مخرمة ومروان فذكر حديث الحديبية وشرط سهيل الذي ذكرنا وفيه: ثم جاء نسوة مؤمنات فأنزل الله عز وجل {يأيها لذين آمنوا إذا جآءكم لمؤمنات مهاجرات فمتحنوهن لله أعلم بإيمانهن فإن علمتموهن مؤمنات فلا ترجعوهن إلى لكفار لا هن حل لهم ولا هم يحلون لهن وآتوهم مآ أنفقوا ولا جناح عليكم أن تنكحوهن إذآ آتيتموهن أجورهن ولا تمسكوا بعصم لكوافر واسألوا مآ أنفقتم وليسألوا مآ أنفقوا ذلكم حكم لله يحكم بينكم ولله عليم حكيم} إلى قوله {يأيها لذين آمنوا إذا جآءكم لمؤمنات مهاجرات فمتحنوهن لله أعلم بإيمانهن فإن علمتموهن مؤمنات فلا ترجعوهن إلى لكفار لا هن حل لهم ولا هم يحلون لهن وآتوهم مآ أنفقوا ولا جناح عليكم أن تنكحوهن إذآ آتيتموهن أجورهن ولا تمسكوا بعصم لكوافر واسألوا مآ أنفقتم وليسألوا مآ أنفقوا ذلكم حكم لله يحكم بينكم ولله عليم حكيم} حدثنا محمد بن سعيد بن نبات، حدثنا محمد بن أحمد بن مفرج، ثنا عبد الله بن جعفر بن الورد، ثنا عمرو بن أحمد بن سرح، وأحمد بن زغبة قالا: حدثنا يحيى بن بكير، ثنا الليث بن سعد، عن عقيل، عن الزهري، قال: أخبرني عروة بن الزبير ومروان بن الحكم عن أصحاب رسول الله صلى الله عليه وسلم أن رسول الله صلى الله عليه وسلم لما كاتب سهيل بن عمرو يومئذ يعني يوم الحديبية فذكر الحديث وفيه: فرد يومئذ أبا جندل إلى

them to be believers, do not return them to the unbelievers. These women are not lawful for those men, nor are those men lawful for these women. Give those men what they have spent. There is no blame upon you if you marry these women when you have given them their bridal dues. Do not hold fast to marriage bonds with unbelieving women. Ask for what you have spent, and let them ask for what they have spent. That is Allah's judgment; He judges between you, and Allah is Knowing, Wise}, down to His words: {O you who believe, when believing women come to you as emigrants, examine them. Allah knows best their faith. Then, if you know them to be believers, do not return them to the unbelievers. These women are not lawful for those men, nor are those men lawful for these women. Give those men what they have spent. There is no blame upon you if you marry these women when you have given them their bridal dues. Do not hold fast to marriage bonds with unbelieving women. Ask for what you have spent, and let them ask for what they have spent. That is Allah's judgment; He judges between you, and Allah is Knowing, Wise}.

Muhammed ibn Saʿid ibn Nabat narrated to us; Muhammed ibn Ahmad ibn Mufarrij narrated to us; ʿAbd Allah ibn Jaʿfar ibn al-Ward narrated to us; ʿAmr ibn Ahmad ibn Sarh and Ahmad ibn Zughbah narrated to us, both saying: Yahya ibn Bukayr narrated to us; al-Layth ibn Saʿd narrated to us, from ʿUqayl, from al-Zuhri, who said: ʿUrwah ibn al-Zubayr and Marwan ibn al-Hakam informed me, from the Companions of the Messenger of Allah, may Allah bless him and grant him peace ﷺ, that when the Messenger of Allah, may Allah bless him and grant him peace ﷺ, drew up a written agreement with Suhayl ibn ʿAmr that day —meaning the day of al-Hudaybiyyah. He then related the account, which includes: That day he returned Abu Jandal to his father, Suhayl ibn ʿAmr. Throughout that period, no man came to him without his returning him, even if he was a Muslim. Believing women came as emigrants, and Umm Kulthum, daughter of ʿUqbah ibn Abi Muʿayt, was among those who went out to the Messenger of Allah, may Allah bless him and grant him peace ﷺ, that day. She was a young woman of marriageable age. Her family came asking the Messenger of Allah, may Allah bless him and grant him peace ﷺ, to return her to them, but he did not return her to

أبيه سهيل بن عمرو، ولم يأته أحد من الرجال إلا رده في تلك المدة وإن كان مسلما، وجاء المؤمنات مهاجرات، وكانت أم كلثوم بنت عقبة بن أبي معيط ممن خرج إلى رسول الله صلى الله عليه وسلم يومئذ وهي عاتق فجاء أهلها يسألون رسول الله صلى الله عليه وسلم أن يرجعها إليهم فلم يرجعها إليهم لما أنزل الله عز وجل فيهن {يأيها لذين آمنوا إذا جآءكم لمؤمنات مهاجرات فمتحنوهن لله أعلم بإيمانهن فإن علمتموهن مؤمنات فلا ترجعوهن إلى لكفار لا هن حل لهم ولا هم يحلون لهن وآتوهم مآ أنفقوا ولا جناح عليكم أن تنكحوهن إذآ آتيتموهن أجورهن ولا تمسكوا بعصم لكوافر واسألوا مآ أنفقتم وليسألوا مآ أنفقوا ذلكم حكم لله يحكم بينكم ولله عليم حكيم} حدثنا عبد الرحمن بن عبد الله، نا أبو إسحاق البلخي، نا الفربري، نا البخاري، نا إسحاق، ثنا يعقوب، ثنا ابن أخي ابن شهاب عن عمه قال: أخبرني عروة بن الزبير، أنه سمع مروان بن الحكم والمسور بن مخرمة يخبران خبر من رسول الله صلى الله عليه وسلم في الحديبية وذكر الحديث وفيه أن سهيلا كاتب النبي صلى الله عليه وسلم على ألا يأتيه من المشركين أحد وإن كان على دين الإسلام إلا رده إلى المشركين قالا: وجاءت المؤمنات مهاجرات فكانت أم كلثوم بنت عقبة بن أبي معيط ممن خرج إلى رسول الله صلى الله عليه وسلم وهي عاتق فجاء أهلها يسألون رسول الله أن يرجعها إليهم حتى أنزل الله في المؤمنات ما أنزل.

them because of what Allah, mighty and majestic, had revealed concerning these women: {O you who believe, when believing women come to you as emigrants, examine them. Allah knows best their faith. Then, if you know them to be believers, do not return them to the unbelievers. These women are not lawful for those men, nor are those men lawful for these women. Give those men what they have spent. There is no blame upon you if you marry these women when you have given them their bridal dues. Do not hold fast to marriage bonds with unbelieving women. Ask for what you have spent, and let them ask for what they have spent. That is Allah's judgment; He judges between you, and Allah is Knowing, Wise}.

ʿAbd al-Rahman ibn ʿAbd Allah narrated to us; Abu Ishaq al-Balkhi narrated to us; al-Firabri narrated to us; al-Bukhari narrated to us; Ishaq narrated to us; Yaʿqub narrated to us; the son of Ibn Shihab's brother narrated to us, from his uncle, who said: ʿUrwah ibn al-Zubayr informed me that he heard Marwan ibn al-Hakam and al-Miswar ibn Makhramah relating an account concerning the Messenger of Allah, may Allah bless him and grant him peace ﷺ, at al-Hudaybiyyah. He related the account, which includes that Suhayl drew up a written agreement with the Prophet, may Allah bless him and grant him peace ﷺ, stipulating that no one from among the polytheists should come to him, even if he followed the religion of Islam, without his returning him to the polytheists. The two said: Believing women came as emigrants, and Umm Kulthum, daughter of ʿUqbah ibn Abi Muʿayt, was among those who went out to the Messenger of Allah, may Allah bless him and grant him peace ﷺ. She was a young woman of marriageable age. Her family came

asking the Messenger of Allah to return her to them, until Allah revealed concerning believing women what He revealed.[45][46][47][48][49]

L1913–1915 ʿAbd Allah ibn Rabiʿ narrated to us; Muhammed ibn Ishaq narrated to us; Ibn al-Aʿrabi narrated to us; Abu Dawud narrated to us; Muhammed ibn ʿUbayd narrated to us that Muhammed ibn Thawr narrated to them, from Maʿmar, from al-Zuhri, from ʿUrwah ibn al-Zubayr, from al-Miswar ibn Makhramah, who said: The Prophet, may Allah bless him and grant him peace ﷺ, departed from al-Hudaybiyyah. He then related the account and Quraysh's stipulation that anyone who came as a Muslim should be returned to them. It includes: Then believing women came as emigrants, so Allah forbade them to return these women and commanded them to return the bridal payment.

Abu Muhammed said: If Allah Most High abrogated His Prophet's covenant, agreement, and stipulation—peace be upon him— then who is this ignorant man who permits this stipulation for anyone after him? Disavow that before Allah.

Abu Muhammed said: The same applies to the report of Abu Rafiʿ: it is abrogated by Baraʾah. Moreover, it is a report that we find objectionable,

حدثنا عبد الله بن ربيع، نا محمد بن إسحاق، ثنا ابن الأعرابي، ثنا أبو داود، ثنا محمد بن عبيد أن محمد بن ثور حدثهم، عن معمر عن الزهري عن عروة بن الزبير عن المسور بن مخرمة قال خرج النبي صلى الله عليه وسلم من الحديبية فذكر الحديث وشرط قريش في رد من جاء مسلما إليهم وفيه: ثم جاء نسوة مهاجرات مؤمنات فنهاهم الله أن يردوهن وأمرهم أن يردوا الصداق. قال أبو محمد: فإذا نسخ الله تعالى عهد نبيه عليه السلام وعقده وشرطه، فمن هذا الجاهل الذي يجيز هذا الشرط لأحد بعده، تبرأ إلى الله من ذلك. قال أبو محمد: وهكذا القول في حديث أبي رافع أنه منسوخ ببراءة على أنه حديث ننكره، وإن كنا لا نعلم في سنده علة، ولكنا نعجب منه لأن أبا رافع كان مولى النبي صلى الله عليه وسلم مولى عتاقة فكيف صار مع مشركي قريش رسولا إلى النبي صلى الله عليه وسلم ونزول براءة كان بعد إسلام جميع قريش وبعد حديث أبي رافع بلا شك. قال أبو محمد: فلما لاح بكل ما ذكرنا أنه لا حجة في شيء مما ذكرنا لمن أجاز النذور والعقود والشروط والعهود على الجملة إلا ما عين بنص أو إجماع، على أنه لا يجوز منها، رجعنا إلى القول الثاني فوجدناه صحيحا، ووجدنا النصوص التي احتجوا بها مبينة مفسرة قاضية على هذه الجملة التي احتج بها خصومهم، وجدنا النصوص شاهدة بصحة قولهم. فمن ذلك نص النبي عليه السلام وهو الذي قال فيه الله تعالى {بلبينات ولزبر وأنزلنا إليك لذكر لتبين للناس ما نزل إليهم ولعلهم يتفكرون} فقال عليه السلام: ما بال أقوام يشترطون شروطا ليست في كتاب الله، كل شرط في كتاب الله فهو باطل وإن كان مائة شرط، شرط الله أوثق وكتاب الله أحق فصح بهذا النص. وقد ذكرنا في هذا الباب بسنده: أن كل شرط اشترطه إنسان على نفسه أو لها على غيره فهو باطل، لا يلزم من التزمه أصلا، إلا أن يكون النص أو الإجماع قد ورد

[45] **Translator's note (L1907):** The quotation corresponding to 4:176 contains numerous missing initial alifs and irregular spellings; its identifiable wording is reflected in the translation. The technical inheritance term is rendered "one who leaves neither parent nor child." The text states "one year and two months" between the conquest in Ramadan of year eight and the pilgrimage in Dhu al-Hijja of year nine. These named months would ordinarily yield one year and three months; the stated interval has been preserved.

[46] **Translator's note (L1909):** The supplied wording immediately before "the women" is awkward: it can be read as an intrusive connective attached to "return," or, if vocalized differently, as "an individual." The translation follows the contextually indicated sense, "the return of women," while flagging the irregular reading.

[47] **Translator's note (L1910):** The opening "Muhammed" completes the name ʿAbd Allah ibn Muhammed in the preceding segment. After "down to His words," the supplied text repeats the entire same Quranic quotation, rather than giving a different endpoint. The repetition is retained.

[48] **Translator's note (L1912):** The wording "relating an account concerning the Messenger" renders the syntactically awkward supplied phrase "يخبران خبر من رسول الله."

[49] **Qur'an references (L1907):** Qur'an 4:176 (An-Nisa); Qur'an 60:10 (Al-Mumtahanah).

although we know of no defect in its chain of transmission. We nevertheless find it surprising, because Abu Rafiʿ was the Prophet's client, may Allah bless him and grant him peace ﷺ—a client through manumission. How, then, did he come to be with the polytheists of Quraysh as an envoy to the Prophet, may Allah bless him and grant him peace ﷺ? The revelation of Baraʾah occurred after all Quraysh had embraced Islam and after the report of Abu Rafiʿ, without doubt.

Abu Muhammed said: When everything we have mentioned made it clear that nothing we have mentioned provides any proof for those who permit vows, agreements, stipulations, and covenants in general, except those specifically identified by a textual ruling or consensus as impermissible, we returned to the second position and found it correct. We found the texts they adduced as proof to be explanatory and elucidatory, governing the general statement their opponents had adduced as proof. We found the texts bearing witness to the correctness of their position. Among them is the Prophet's explicit statement—peace be upon him—and he is the one concerning whom Allah Most High said: {With clear proofs and scriptures; and We have sent down to you the Reminder, so that you may explain to people what has been sent down to them, and so that they may reflect}. He said, peace be upon him: "What is the matter with people who impose stipulations that are not in Allah's Book? Every stipulation in Allah's Book is void, even if there are a hundred stipulations. Allah's stipulation is more binding, and Allah's Book has the greater right."

This explicit statement, which we have cited with its chain of transmission in this chapter, establishes that every stipulation a person imposes upon himself, or upon another for his own benefit, is void and imposes absolutely no obligation upon the person who undertakes it, unless either a textual ruling or consensus has established the permissibility of undertaking that particular stipulation or made it obligatory. This applies only to a few stipulations,

أحدهما بجواز التزام ذلك الشرط بعينه أو بإلزامه، وليس ذلك إلا في شروط يسيرة قد ذكرناها في كتابنا المرسوم بذي القواعد.

which we have mentioned in our book entitled The Possessor of Principles (Dhu al-Qawaʿid).[505][152]

L1916–1924 As for vows, ʿAbd Allah ibn Yusuf narrated to us, saying: Ahmad ibn Fath narrated to us; ʿAbd al-Wahhab ibn ʿIsa narrated to us; Ahmad ibn Muhammed narrated to us; Ahmad ibn ʿAli narrated to us; Muslim ibn al-Hajjaj narrated to us; Muhammed ibn al-Muthanna narrated to us; Muhammed ibn Jaʿfar narrated to us; Shuʿbah ibn Mansur narrated to us, from ʿAbd Allah ibn Murrah, from ʿAbd Allah ibn ʿUmar, from the Prophet, may Allah bless him and grant him peace ﷺ, that he forbade making vows and said: "It brings no good; it is only a means of extracting something from the miser." Ibn al-Muthanna said: Abd al-Rahman ibn Mahdi also related to us, from Sufyan al-Thawri, from Mansur, from Abd Allah ibn Murrah, from Ibn Umar, from the Prophet ﷺ, the same report. Through the same chain to Muslim: Qatiyah related to us; Abd al-Aziz—meaning al-Darawardi—related to us, from al-Ala ibn Abd al-Rahman, from his father, from Abu Hurayrah, that the Messenger of Allah ﷺ said: "Do not make vows, for a vow avails nothing against the divine decree; it is only a means of extracting something from the miser." Abd Allah ibn Rabi related to us; Umar ibn Abd al-Malik related to us; Muhammed ibn Bakr related to us; Abu Dawud related to us; Muslim ibn Ibrahim related to us; Hisham—that is, al-Dastawa'i—related to us, from Qatadah, from Ikrimah, from Ibn Abbas, that when the Messenger of Allah ﷺ learned that the sister of Uqbah ibn Amir had vowed to perform the pilgrimage on foot, he said: "Allah has no need of her vow. Tell her to ride." These two texts thus invalidate all vows, and none of them is binding except what a text establishes, either by making it obligatory or by

وأما النذور: فإن عبد الله بن يوسف حدثنا قال: حدثنا أحمد بن فتح، نا عبد الوهاب بن عيسى، ثنا أحمد بن محمد، ثنا أحمد بن علي، ثنا مسلم بن الحجاج، نا محمد بن المثنى، نا محمد بن جعفر، نا شعبة بن منصور، عن عبد الله بن مرة عن عبد الله بن عمر عن النبي صلى الله عليه وسلم أنه نهى عن النذر وقال إنه لا يأتي بخير وإنما يستخرج به من البخيل قال ابن المثنى: وحدثنا عبد الرحمن بن مهدي، عن سفيان الثوري، عن منصور عن عبد الله بن مرة عن ابن عمر عن النبي صلى الله عليه وسلم به وبه إلى مسلم نا قتيبة نا عبد العزيز يعني الدراوردي، عن العلاء بن عبد الرحمن عن أبيه عن أبي هريرة أن رسول الله صلى الله عليه وسلم قال لا تنذروا فإن النذر لا يغني من القدر شيئا، وإنما يستخرج به من البخيل. حدثنا عبد الله بن ربيع، نا عمر بن عبد الملك، نا محمد بن بكر، نا أبو داود، ثنا مسلم بن إبراهيم، نا هشام هو الدستوائي، عن قتادة عن عكرمة عن ابن عباس أن رسول الله صلى الله عليه وسلم لما بلغه أن أخت عقبة بن عامر نذرت أن تحج ماشية قال: إن الله لغني عن نذرها مرها أن تركب. فبطلت بهذين النصين النذور كلها، ولم يلزم منها شيء إلا ما أتى به النص إما بإيجابه وإما بإباحة التزامه، وليس ذلك إلا فيما كان طاعة لله عز وجل فقط، على ما بينه عليه السلام إذ يقول: من نذر أن يطيع الله فليطعه وقد ذكرناه بسنده في هذا الباب، وما عدا ذلك فلا يلزم من التزامه أصلا. وأما العقود فإن عبد الله بن يوسف حدثنا قال: نا أحمد بن فتح، نا عبد الوهاب بن عيسى، نا أحمد بن محمد، نا أحمد بن علي، نا مسلم، نا إسحاق بن إبراهيم، وعبد بن حميد كلاهما عن أبي عامر العقدي، نا عبد الله بن جعفر الزهري، عن سعد بن إبراهيم، أن القاسم بن محمد قال

[50] **Translator's note (L1913):** The supplied text says "departed from al-Hudaybiyyah"; the preposition "from" has been retained.

[51] **Translator's note (L1914):** The unvocalized "تبرأ" has been read as the imperative "Disavow." A third-person past-tense reading, "he disavowed," is also grammatically possible, but its referent is unclear here. Bara'ah is the title used here for the Quranic surah also known as al-Tawbah. The supplied prophetic quotation says "Every stipulation in Allah's Book is void," apparently omitting a negation. This conflicts with its immediately preceding sentence and with the argument that follows; the supplied wording is retained.

[52] **Qur'an references (L1913):** Qur'an 16:44 (An-Nahl).

permitting one to undertake it. This applies only to what constitutes obedience to Allah, Mighty and Majestic, as he, peace be upon him, explained when he said: "Whoever vows to obey Allah, let him obey Him." We have already cited it with its transmission chain in this chapter. As for anything beyond that, undertaking it creates no obligation whatsoever. As for contracts, Abd Allah ibn Yusuf related to us, saying: Ahmad ibn Fath related to us; Abd al-Wahhab ibn Isa related to us; Ahmad ibn Muhammed related to us; Ahmad ibn Ali related to us; Muslim related to us; Ishaq ibn Ibrahim and Abd ibn Humayd related to us, both from Abu Amir al-Aqadi: Abd Allah ibn Ja'far al-Zuhri related to us, from Sa'd ibn Ibrahim, that al-Qasim ibn Muhammed said to him: A'ishah informed me that the Messenger of Allah ﷺ said: "Whoever performs an act that does not accord with our command, it is rejected." This text thus establishes the invalidity of every contract a person concludes and undertakes, except what is established to be a contract concerning which there has come a text or consensus making it binding by name, or permitting the undertaking of that particular contract. Likewise, the Messenger of Allah ﷺ ruled that the settlement made by those who reached a settlement with the man whose son had committed fornication with his wife was invalid. As for "The believer's promise is obligatory," its transmission chain omits the Companion, and it also contains Hisham ibn Sa'd, who is weak. Likewise, "Do not make a promise to your brother and then break it" also has a transmission chain that omits the Companion. Those who invoke this as evidence are the very people who most strongly act contrary to it, for they do not rule that someone who has made a promise must fulfill it. As for "If you say to a child, 'Come here; here, this is for you,'" its transmission chain is interrupted, because Ibn Shihab did not meet Abu Hurayrah. Even if it were authentic, it would provide them with no evidence, because that expression constitutes a valid, binding gift. As for covenants, Allah, Mighty and Majestic, states in Surat Bara'ah, which is the last surah He revealed, the last covenant He prescribed for Muslims and polytheists, thereby abrogating everything that preceded it. He, Exalted, said: {How can the polytheists have a covenant with Allah and with His Messenger, except those with whom you made a covenant at the Sacred Mosque? So long as they remain upright toward you, remain upright toward them.

له أخبرتني عائشة أن رسول الله صلى الله عليه وسلم قال من عمل عملا ليس عليه أمرنا فهو رد فصح بهذا النص بطلان كل عقد عقده الإنسان والتزمه، إلا ما صح أن يكون عقدا جاء النص، أو الإجماع بإلزامه باسمه أو بإباحة التزامه بعينه وكذلك حكم رسول الله صلى الله عليه وسلم بإبطال صلح الذين صالح الذي زنى ابنه بامرأته. وأما: وأي المؤمن واجب فمرسل، وفيه أيضا هشام بن سعد وهو ضعيف، وكذلك: لا تعد أخاك وتخلفه مرسل أيضا، والمحتجون بذلك أشد الناس خلافا له، فلا يقضون على من وعد بإنجازه. وأما إذا قلت لصبي: تعال هاه لك فمنقطع لأن ابن شهاب لم يلق أبا هريرة ولو صح لم يكن لهم فيه حجة، لأن ذلك اللفظ هبة صحيحة لازمة. وأما العهود فإن الله عز وجل يقول في سورة براءة التي هي آخر سورة أنزلها، آخر عهد عهد به إلى المسلمين والمشركين، نسخ به جميع ما تقدم فقال تعالى {كيف يكون للمشركين عهد عند الله وعند رسوله إلا لذين عاهدتم عند لمسجد لحرام فما ستقاموا لكم فستقيموا لهم إن الله يحب لمتقين} فأبطل عز وجل كل عهد يعهده أحد لمشرك، إلا على ما نص في السورة المذكورة من غرم الجزية مع الصغار لأهل الكتاب خاصة واستثنى تعالى الذين عاهد رسول الله صلى الله عليه وسلم عند المسجد الحرام خاصة وهم الذين ذكروا في أول السورة إذ يقول تعالى {برآءة من الله ورسوله إلى لذين عاهدتم من لمشركين * فسيحوا في لأرض أربعة أشهر وعلموا أنكم غير معجزي الله وأن الله مخزي لكافرين} فلما انقضت تلك الأربعة الأشهر لم يبق لمشرك على مسلم عهد إلا السيف أو الإسلام، إلا أن يكون كتابيا فيرضى بغرم الجزية مع الصغار، فيجاب إلى ذلك، وإلا فالسيف، فصح بهذا النص أن كل عهد عاهده مسلم مشركا على غير الجزية مع الصغار، فهو عهد الشيطان مفسوخ مردود لا يحل الوفاء به، ولا فرق بين من أخذ بحديث أبي جندل، وبين من صلى إلى بيت المقدس وترك الكعبة لأن النبي صلى الله

Indeed, Allah loves the God-fearing.} Thus He, Mighty and Majestic, invalidated every covenant anyone makes with a polytheist, except on the terms expressly stated in the aforementioned surah: payment of the poll tax with subjection, specifically for the People of the Book. He, Exalted, made an exception specifically for those with whom the Messenger of Allah ﷺ made a covenant at the Sacred Mosque. They are those mentioned at the beginning of the surah, where He, Exalted, says: {A declaration of release from Allah and His Messenger to those polytheists with whom you made a covenant. * So travel about in the land for four months, and know that you cannot thwart Allah, and that Allah will disgrace the unbelievers.} When those four months had elapsed, no polytheist retained any covenant binding upon a Muslim: there remained only the sword or Islam, unless he belonged to the People of the Book and agreed to pay the poll tax with subjection, in which case his request would be granted; otherwise, the sword. This text thus establishes that every covenant a Muslim makes with a polytheist on terms other than the poll tax with subjection is a covenant of Satan, annulled and rejected, which it is unlawful to fulfill. There is no difference between someone who follows the report of Abu Jandal and someone who prays toward Jerusalem and abandons the Kaaba, because the Prophet ﷺ did both things, and then both were abrogated. Utterly astonishing is someone who disregards the limits set by Allah, Exalted, concluding contracts contrary to them, yet observes a covenant with an unbeliever that Allah and His Messenger have commanded be annulled. And utterly astonishing are the Malikis who say that if unbelievers come to stay among us who belong to a belligerent territory under a guarantee of safety, having with them captives, men and women, Muslim males and Muslim females, these are not to be taken away from them; they are to be left with them, and they are to be sent back to their own lands, without being prevented from having sexual intercourse. Abu Muhammed said: We declare ourselves free before Allah, Mighty and Majestic, of this accursed opinion, at the very hearing of which Muslims' bodies shudder—how much more at believing it! Would that I knew: if they made a covenant with them stipulating digging up the grave of the Prophet ﷺ, or converting the mosques into churches, or hanging bells in the minarets, do you suppose they would consider it necessary to fulfill these covenants with them, despite

عليه وسلم فعل كلا الأمرين ثم نسخا والعجب كل العجب ممن لا يراعي حدود الله تعالى، فيعقد عقودا بخلافها، ويراعي عهد كافر قد أمر الله ورسوله بفسخه. والعجب كل العجب من المالكيين القائلين: إنه إن نزل عندنا كفار حربيون بأمان، وعندهم أسارى رجال ونساء مسلمون ومسلمات أنهم لا ينتزعون منهم، ويتركون ويردونهم إلى بلادهم ولا يمنعون من الوطء. قال أبو محمد: ونحن نبرأ إلى الله عز وجل من هذا القول الملعون الذي تقشعر أجساد المسلمين من سماعه، فكيف من اعتقاده فليت شعري لو عاهدوهم على نبش قبر النبي صلى الله عليه وسلم أو على قلب المساجد كنائس أو على تعليق النواقيس في المآذن، أتراهم كانوا يرون الوفاء لهم بهذه العهود؟ مع ما يسمعون من قوله تعالى {كيف يكون للمشركين عهد عند الله وعند رسوله إلا لذين عاهدتم عند لمسجد لحرام فما ستقاموا لكم فستقيموا لهم إن الله يحب لمتقين} ثم يتعلقون بحديث أبي جندل وهو منسوخ، لما نص الله تعالى في براءة مما قد تلوناه في هذا الباب فإن تعلقوا بقول الله تعالى {وإن أحد من لمشركين ستجارك فأجره حتى يسمع كلام الله ثم أبلغه مأمنه ذلك بأنهم قوم لا يعلمون} فهذه حجة عليهم لا لهم لأن الله تعالى لم يبح في هذه الآية أن يطلقوا على مسلم ولا على ماله ولا على إذلاله، وإنما أباح حقن دمائهم فقط ولا مزيد أما سمعوا قوله تعالى {محمد رسول الله ولذين معه أشدآء على لكفار رحمآء بينهم تراهم ركعا سجدا يبتغون فضلا من الله ورضوانا سيماهم في وجوههم من أثر لسجود ذلك مثلهم في لتوراة ومثلهم في لإنجيل كزرع أخرج شطأه فآزره فستغلظ فستوى على سوقه يعجب لزراع ليغيظ بهم لكفار وعد الله لذين آمنوا وعملوا لصالحات منهم مغفرة وأجرا عظيما} ومن أباح لكافر تملك مسلم فقد انقلبت صفتهم، فصاروا رحماء على الكافرين أشداء بينهم، نعوذ بالله من هذه الصفة القبيحة وقوله تعالى {ما كان لأهل لمدينة ومن حولهم من لأعراب أن يتخلفوا عن

hearing His words, Exalted: {How can the polytheists have a covenant with Allah and with His Messenger, except those with whom you made a covenant at the Sacred Mosque? So long as they remain upright toward you, remain upright toward them. Indeed, Allah loves the God-fearing.} Yet they cling to the report of Abu Jandal, although it has been abrogated by what Allah, Exalted, expressly stated in Bara'ah, which we have already recited in this chapter. If they cling to the words of Allah, Exalted, {And if any one of the polytheists seeks your protection, grant him protection until he hears the speech of Allah; then convey him to his place of safety. That is because they are a people who do not know}, this is evidence against them, not for them, because in this verse Allah, Exalted, did not permit them to be given free rein over a Muslim, over his property, or to humiliate him. He permitted only the sparing of their blood, and nothing more. Have they not heard His words, Exalted: {Muhammed is the Messenger of Allah, and those with him are stern toward the unbelievers, merciful among themselves. You see them bowing and prostrating, seeking bounty from Allah and His good pleasure. Their mark is on their faces from the trace of prostration. That is their likeness in the Torah; and their likeness in the Gospel is as a crop that puts forth its shoots, then strengthens them, then grows thick and stands upright upon its stalks, delighting the sowers, so that He may enrage the unbelievers through them. Allah has promised those among them who believe and do righteous deeds forgiveness and a mighty reward.} Whoever permits an unbeliever to own a Muslim has thereby reversed their description: they have become merciful toward the unbelievers, stern among themselves. We seek refuge in Allah from this ugly description. And His words, Exalted: {It was not for the people of Medina and the Bedouins around them to remain behind the Messenger of Allah, nor to prefer their own lives to his. That is because neither thirst, nor weariness, nor hunger afflicts them in the path of Allah, nor do they tread any ground that enrages the unbelievers, nor inflict any loss upon an enemy, without a righteous deed being recorded for them on its account. Indeed, Allah does not let the reward of those who do good go to waste.} Hammam related to us; al-Asili related to us; related to us: al-Marwazi; al-Firabri related to us; al-Bukhari related to us; Muhammed ibn al-Ala related to us; Usamah informed us, from Burayd, from Abu Burdah,

رسول الله ولا يرغبوا بأنفسهم عن نفسه ذلك بأنهم لا يصيبهم ظمأ ولا نصب ولا مخمصة في سبيل الله ولا يطأون موطئا يغيظ لكفار ولا ينالون من عدو نيلا إلا كتب لهم به عمل صالح إن الله لا يضيع أجر لمحسنين} حدثنا حمام ثنا الأصيلي نا المروزي، نا الفربري، نا البخاري، نا محمد بن العلاء، أنبأنا أسامة عن بريد عن أبي بردة عن أبي موسى عن النبي صلى الله عليه وسلم قال المؤمن للمؤمن كالبنيان يشد بعضه بعضا، وشبك بين أصابعه. حدثنا عبد الرحمن بن عبد الله الهمداني، نا أبو إسحاق البلخي، نا الفربري، حدثناالبخاري، نا سعيد بن الربيع، نا شعبة عن الأشعث، سمعت معاوية بن سويد يقول: سمعت البراء بن عازب قال أمرنا رسول الله صلى الله عليه وسلم بسبع فذكر فيها نصر المظلوم

from Abu Musa, from the Prophet ﷺ, who said: “The believer is to the believer like a building, each part strengthening the other.” And he interlaced his fingers. Abd al-Rahman ibn Abd Allah al-Hamdani related to us; Abu Ishaq al-Balkhi related to us; al-Firabri related to us; al-Bukhari related to us; Saʿid ibn al-Rabi related to us; Shuʿbah related to us, from al-Ashʿath: I heard Muʿawiyah ibn Suwayd say: I heard al-Bara ibn Azib say: “The Messenger of Allah ﷺ commanded us to do seven things.” Among them he mentioned aiding the oppressed.[5354555657585960616 2]

[53]**Translator’s note (L1916):** The supplied chain reads “Shuʿbah ibn Mansur.” This may be a transcription error for “Shuʿbah, from Mansur,” but the supplied wording is retained.

[54]**Translator’s note (L1917):** The transmitted name قتية is rendered “Qatiyah”; it appears to be a defective spelling of Qutaybah, but has not been silently corrected.

[55]**Translator’s note (L1918):** The wording describing the settlement is syntactically awkward and leaves the referent of “his wife” uncertain. The translation preserves that uncertainty. The technical term mursal denotes a report transmitted without naming the Companion intermediary.

[56]**Translator’s note (L1920):** The Qur’anic quotations contain repeated defective spellings, particularly missing initial alifs. Their identifiable wording has been translated without reproducing the orthographic defects. The Arabic allows some syntactic uncertainty in the description of Surat Bara’ah as the last revelation and the last covenant; both authorial claims are retained.

[57]**Translator’s note (L1921):** The single word harbiyyun describes the unbelievers in the preceding segment and denotes their legal status as belonging to a territory at war.

[58]**Translator’s note (L1922):** The pronouns in “they are to be sent back to their own lands” do not explicitly distinguish the unbelievers from the captives; the surrounding argument concerns allowing the unbelievers to return with their captives. “Having sexual intercourse” translates the unqualified Arabic expression; in context it concerns intercourse with the captive women.

[59]**Translator’s note (L1923):** The Qur’anic quotations contain repeated defective spellings, particularly missing initial alifs; their identifiable wording has been translated. The final transmission formula introduces al-Marwazi at the beginning of the following segment.

[60]**Translator’s note (L1924):** The supplied chain reads “Usamah.” The familiar wording of this chain names Abu Usamah, but the supplied reading has been retained.

[61]**Hadith references (L1916):** Sahih Muslim 1640a; Sunan an-Nasai 3805; Jami at-Tirmidhi 1538.

[62]**Qur’an references (L1916):** Qur’an 9:7 (At-Tawbah); Qur’an 9:6 (At-Tawbah); Qur’an 48:29 (Al-Fath); Qur’an 9:120 (At-Tawbah).

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Abd Allah ibn Yusuf related to us; Ahmad ibn Fath related to us; Abd al-Wahhab related to us; Ahmad ibn Muhammed related to us; Ahmad ibn Ali related to us; Muslim related to us; Qutaybah related to us; al-Layth related to us, from Uqayl, from al-Zuhri, from Salim, from his father, that the Messenger of Allah ﷺ said: "The Muslim is the brother of the Muslim: he does not wrong him nor hand him over. Whoever attends to his brother's need, Allah attends to his need; whoever relieves a Muslim of a distress, Allah thereby relieves him of one of the distresses of the Day of Resurrection; and whoever conceals a Muslim's faults, Allah conceals his faults on the Day of Resurrection." Through the same chain to Muslim: "'Abd Allah ibn Maslamah ibn Qa'b narrated to us; Dawud—meaning Ibn Qays—narrated to us, from Abu Sa'id, the freedman of 'Amir ibn Kurayz, from Abu Hurayrah, who said: 'The Messenger of Allah ﷺ said: "The Muslim is the Muslim's brother: he neither wrongs him nor abandons him."'" Through the same chain to Muslim: "Muhammed ibn 'Abd Allah ibn Numayr narrated to us; my father narrated to us; Zakariyya ibn Abi Za'idah narrated to us, from al-Sha'bi, from al-Nu'man ibn Bashir, who said: 'The Messenger of Allah ﷺ said: "The believers, in their mutual affection, sympathy, and mercy, are like the body: when one of its members suffers, the rest of the body responds with sleeplessness and fever."'" Through the same chain to Muhammed ibn 'Abd Allah ibn Numayr: "Humayd ibn 'Abd al-Rahman narrated to us, from al-A'mash, from Khaythamah, from al-Nu'man ibn Bashir, who said: 'The Messenger of Allah ﷺ said: "The Muslims are like a single man: if his eye suffers, his whole body suffers; and if his head suffers, his whole body suffers."'"

Abu Muhammed said: They disregarded all of this. We know that there is no wronging of a Muslim, no handing him over, no abandoning him, no neglecting his need, no more complete aggravation of his distress, no exposure of him—and of every Muslim—to disgrace, and no more severe opposition to Allah Most High and to the Messenger ﷺ than leaving a Muslim man and a Muslim woman with a polytheist who humiliates her and has intercourse with her. This necessarily entails that, if a wrongdoer seeking worldly gain rebels against the imam and refuses obedience to him, returning to obedi-

حدثنا عبد الله بن يوسف، نا أحمد بن فتح، نا عبد الوهاب، نا أحمد بن محمد، نا أحمد بن علي، نا مسلم، نا قتيبة، نا الليث، عن عقيل عن الزهري عن سالم عن أبيه أن رسول الله صلى الله عليه وسلم قال المسلم أخو المسلم لا يظلمه ولا يسلمه ومن كان في حاجة أخيه كان الله في حاجته، ومن فرج عن مسلم كربة فرج الله عنه بها كربة من كرب يوم القيامة، ومن ستر مسلما ستره الله يوم القيامة. وبه إلى مسلم، نا عبد الله بن مسلمة بن قعب، نا داود يعني ابن قيس عن أبي سعيد مولى عامر بن كريز عن أبي هريرة قال قال رسول الله صلى الله عليه وسلم المسلم أخو المسلم لا يظلمه ولا يخذله وبه إلى مسلم، ثنا محمد بن عبد الله بن نمير، نا أبي، نا زكريا بن أبي زائدة، عن الشعبي عن النعمان بن بشير قال قال رسول الله صلى الله عليه وسلم مثل المؤمنين في توادهم وتعاطفهم وتراحمهم مثل الجسد، إذا اشتكى منه عضو تداعى له سائر الجسد بالسهر والحمى وبه إلى محمد بن عبد الله بن نمير، نا حميد بن عبد الرحمن، عن الأعمش، عن خيثمة عن النعمان بن بشير قال قال رسول الله صلى الله عليه وسلم المسلمون كرجل واحد إن اشتكى عينه اشتكى كله وإن اشتكى رأسه اشتكى كله قال أبو محمد فأعرضوا عن هذا كله وقد علمنا أنه لا ظلم للمسلم، ولا إسلام له ولا خذلان له، ولا تضييع لحاجته، ولا أتم لكربته، ولا فضيحة له، ولكل مسلم ولا أشد خلافا على الله تعالى وعلى رسول صلى الله عليه وسلم من ترك المسلم والمسلمة عند المشرك يذلها ويطؤها، ووجب بهذا ضرورة أن الإمام إذا تعاصى عليه خارج عن طاعته، ظالم طالب دنيا، فلم يراجع الطاعة إلا بأمان وعهود وعقود، على ألا يتعرض في شيء من حاله، ولا مما بيده، فإنه أمان فاسد، وعقد باطل، وعهود ساقطة، وشروط مفسوخة كلها، ولا يسقط عنه شيء إلا حد المحاربة فقط بنص القرآن، إذ يقول تعالى: {إلا الذين تابوا من قبل أن تقدروا عليهم فعلموا أن لله غفور رحيم} ولا يسقط بذلك قود

ence only upon receiving a guarantee of safety, pledges, and agreements that neither his circumstances nor anything in his possession will be interfered with, then that guarantee of safety is unsound, that agreement void, those pledges without force, and those conditions all annulled. Nothing is waived for him except the prescribed punishment for armed brigandage alone, by the explicit text of the Quran, where the Most High says: {Except those who repented before you gained power over them; then know that Allah is Forgiving, Merciful}. This does not waive any Muslim's right to retaliation for loss of life or a lesser injury, any prescribed punishment among the prescribed punishments of Allah Most High, or any Muslim's right concerning property that he took without right. Rather, judgment must be executed against him in all these matters according to what the Quran or the Sunnah requires. Otherwise, the imam disobeys Allah Most High if he neglects this.

Abu Muhammed said: They say concerning someone who says, "If I marry such-and-such a woman, she is divorced," and then marries her, that she becomes divorced from him. They adduce as evidence: {O you who believe, fulfill the contracts. Livestock animals have been made lawful for you, except what is recited to you, without treating game as lawful while you are in a state of ritual consecration. Indeed, Allah rules as He wills}. They hold, concerning a messenger of Allah who came from the territory of war and embraced Islam, that he is to be returned to the unbelievers. Then they say concerning a man who had a Muslim co-owner in a house, whose co-owner offered him the opportunity either to take the share for the price being offered for it or to leave it so that he could sell it to whoever wanted it: his co-owner permitted him to sell, entered into an agreement with him, and voluntarily called people to witness that he relinquished his right of preemption and would not assert it; then the co-owner sold. They say: "That pledge and that agreement are without force and are not binding; he may exercise the right of preemption."

Abu Muhammed said: Could there be anything more outrageous in the inversion of realities than this? Here is a condition whose binding force has been established by the explicit text, yet they annul it, although it is the ruling

لمسلم في نفس فما دونها، ولا حد من حدود الله تعالى، ولا حق لمسلم في مال أخذه بغير حق، بل يقام عليه الحكم في كل ذلك بما أوجبه القرآن أو السنة، وإلا فالإمام عاص لله تعالى إن أغفل ذلك. قال أبو محمد: وهم يقولون فيمن قال: إن تزوجت فلانة فهي طالق فتزوجها إنها تطلق عليه ويحتجون ب {يا أيها لذين آمنوا أوفوا بلعقود أحلت لكم بهيمة لأنعام إلا ما يتلى عليكم غير محلي لصيد وأنتم حرم إن لله يحكم ما يريد} ويرون في رسول الله أتى من دار الحرب فأسلم أنه يرد إلى الكفار، ثم يقولون في رجل كان له شريك مسلم في دار فعرض عليه شريكه أن يأخذ الشقص بما يعطى فيه، أو يترك فيبيعه ممن يريده، فأباح له شريكه أن يبيع، وعقد معه وأشهد الناس طائعا على ترك شفعته، وأنه لا يقوم بها، فباع الشريك قالوا: فذلك العهد وذلك العقد ساقطان لا يلزمان وله الأخذ بالشفعة. قال أبو محمد: أفيكون في عكس الحقائق أشنع من هذا؟ وهذا شرط قد جاء النص بإلزامه فأبطلوه وهو حكم الله تعالى وحكم رسوله صلى الله عليه وسلم وأجازوا شروطا منسوخة لا يحل عقدها الآن أصلا. حدثنا عبد الله بن يوسف، نا أحمد بن فتح، ثنا عبد الوهاب بن عيسى، ثنا أحمد بن محمد، ثنا أحمد بن علي، نا مسلم، نا أبو الطاهر، نا ابن وهب، عن ابن جريج: أن أبا الزبير أخبره أنه سمع جابر بن عبد الله يقول قال رسول الله صلى الله عليه وسلم الشفعة في كل شرك في أرض أو ربع أو حائط لا يصلح أن يبيع حتى يعرض على شريكه فيأخذ أو يدع، فإن أبى فشريكه أحق به حتى يؤذنه وبه إلى مسلم، نا محمد بن عبد الله بن نمير، نا عبد الله بن إدريس، نا ابن جريج عن أبي الزبير عن جابر قال قضى رسول الله صلى الله عليه وسلم بالشفعة في كل شركة لم تقسم ربعه أو حائط لا يحل له أن يبيع حتى يؤذن شريكه، فإن شاء أخذ وإن شاء ترك. فإذا باع ولم يؤذنه فهو أحق به. فهذا

of Allah Most High and the ruling of His Messenger ﷺ. Meanwhile, they permit abrogated conditions that it is now entirely unlawful to stipulate.

ʿAbd Allah ibn Yusuf narrated to us: "Ahmad ibn Fath narrated to us; ʿAbd al-Wahhab ibn ʿIsa narrated to us; Ahmad ibn Muhammed narrated to us; Ahmad ibn ʿAli narrated to us; Muslim narrated to us; Abu al-Tahir narrated to us; Ibn Wahb narrated to us, from Ibn Jurayj, that Abu al-Zubayr informed him that he heard Jabir ibn ʿAbd Allah say: 'The Messenger of Allah ﷺ said: "Preemption applies to every jointly owned interest in land, a dwelling, or an orchard. It is not proper for him to sell until he offers it to his co-owner, who may take it or leave it. If he refuses, his co-owner has the greater right to it until he notifies him."'" Through the same chain to Muslim: "Muhammed ibn ʿAbd Allah ibn Numayr narrated to us; ʿAbd Allah ibn Idris narrated to us; Ibn Jurayj narrated to us, from Abu al-Zubayr, from Jabir, who said: 'The Messenger of Allah ﷺ ruled that preemption applies to every undivided jointly owned property, a dwelling or an orchard. It is not lawful for him to sell until he notifies his co-owner, and then, if he wishes, he may take it, and if he wishes, he may leave it. If he sells without notifying him, the latter has the greater right to it.'" This is a report in which Abu al-Zubayr's hearing from Jabir has been established as authentic. The Prophet ﷺ granted the co-owner the choice of taking or leaving it only before his co-owner's sale, and granted him no right after the sale unless his co-owner had failed to notify him before selling. These people thus invert realities, as you see: they abandon their appeal to {O you who believe, fulfill the contracts. Livestock animals have been made lawful for you, except what is recited to you, without treating game as lawful while you are in a state of ritual consecration. Indeed, Allah rules as He wills} wherever they please, thus invalidating it—the contracts which it is not lawful for a Muslim to remain listening to, let alone enforce, among those whose invalidation has been established by the explicit text, which Allah Most High commanded to be enforced. And they adduce as evidence {O you who believe, fulfill the contracts. Livestock animals have been made lawful for you, except what is recited to you, without treating game as lawful while you are in a state of ritual consecration. Indeed, Allah rules as He wills} wherever they

حديث قد صح سماع أبي الزبير من جابر ولم يجعل النبي صلى الله عليه وسلم الأخذ أم الترك للشريك إلا قبل بيع شريكه، ولم يجعل له بعد البيع حقا إلا إن كان الشريك لم يؤذنه قبل البيع. فعكس هؤلاء القوم الحقائق كما ترى فيتركون احتجاجهم ب {يا أيها لذين آمنوا أوفوا بلعقود أحلت لكم بهيمة لأنعام إلا ما يتلى عليكم غير محلي لصيد وأنتم حرم إن لله يحكم ما يريد} حيث شاؤوا فيبطلونه العقود لا يحل لمسلم القرار على سماعها، فكيف إمضاؤها، مما قد جاء النص بإبطاله، التي أمر الله تعالى بإمضائها ويحتجون ب {يا أيها لذين آمنوا أوفوا بلعقود أحلت لكم بهيمة لأنعام إلا ما يتلى عليكم غير محلي لصيد وأنتم حرم إن لله يحكم ما يريد} حيث شاؤوا فيمضون عقودا ويبطلون من النذور ما قد أمر النبي صلى الله عليه وسلم بإنفاذه باسمه كالنذر في الجاهلية الذي أمر عليه السلام عمر بالوفاء به،

please, thus enforcing contracts, while invalidating vows that the Prophet ﷺ expressly commanded to be fulfilled, such as the vow made in the time of pre-Islamic ignorance which he, peace be upon him, commanded ʿUmar to fulfill.[63][64][65][66][67][68][69]

L1932–1940 These people have thus thoroughly inverted the truth in their pronouncements. They say: “If someone concludes a sale and stipulates conditions that

فعكس هؤلاء القوم في أقوالهم الحق عكسا، ويقولون من باع بيعا فاشترط شروطا تفسده. فقال: أنا أسقط الشرط جاز ذلك وصح البيع. قالوا: فإن باع بيعا إلى أجل مجهول فقال: أنا أعجل الثمن وأسقط الأجل، قالوا: فذلك لا يجوز والبيع فاسد. قالوا: ومن اشترى عبدا بشرط أن يعتقه، فذلك جائز لازم له ولا يرده بعيب يجده فيه، لكن يأخذ أرش العيب، قالوا: فإن أعتقه بشرط ألا يفارقه لم يجز ذلك. قالوا: ومن قال لآخر: بعني عبدك للعتق بأربعين دينارا. فقال: لا بل بخمسين دينارا فأبى المشتري، فقال العبد لسيده: يعني منه بأربعين دينارا وأنا أعقد لك وأشرط لك على نفسي بالعشرة الدنانير الزائدة، وأشهد لك بذلك، فأجاب السيد إلى ذلك والتزم العبد العشرة الدنانير طائعا، وأشهد البينة على نفسه بذلك، فاشترى المشتري العبد فأعتقه، قالوا: لا يلزم العبد مما عقد على نفسه، وأشهد عليها به شيء أصلا، قالوا: فلو قال لعبده أنت حر وعليك خمسون دينارا جاز ذلك ولزم العبد أن يؤديها شاء أم أبى. قالوا: ومن شارط عبده على أن يخدمه هذه السنة التي أولها شهر كذا ثم أنت حر والتزم العبد ذلك، فأبقى العبد تلك السنة كلها، قالوا: فهو حر ولا يلزمه من شرط الخدمة شيء، وقد ذكرنا قولهم في الشفعة. وقالوا فيمن باع ثمر حائطه وشرط للمشتري على نفسه ألا يقوم بالجائحة إن أجيح فأجيح قالوا: لا يلزمه ذلك الشرط وله القيام بالجائحة، ثم قالوا في مريض شاور ورثته في أن يوصي بأكثر من ثلثه وهم في غير كفالته، فأجازوا له ذلك، فأوصى بأكثر من الثلث، ثم مات قالوا: يلزمهم ما التزموا ولا قيام لهم عليه. قال أبو محمد: وهذا عكس الحقائق وإجازة ما لا يجوز، وتحليل ما حرم الله تعالى، وإبطال ما لا يجوز سواه وقالوا: لو تراضى المكاتب وسيده وتشارطا أن المكاتب

[63] **Translator’s note (L1926):** The transmitted name reads “ibn Qaʿb”; it appears to be a corruption of “ibn Qaʿnab.” The following “baʿni” appears to be a typographical corruption of “yaʿni,” meaning “meaning.” The phrase rendered “no more complete aggravation of his distress” is awkward in the supplied Arabic, which reads “wa-la atamma li-kurbatihi.” The comparison has been retained without substituting a different Arabic reading. The Arabic says simply “the Messenger” in the final authorial comparison, without the usual following “of Allah.”

[64] **Translator’s note (L1927):** The Quran quotation contains apparent transcription errors: “fa-ʿlamu” (“then know”) is written without its initial alif, and “Allah” is written “li-llah.” The translation follows the evident sense of the supplied quotation; these irregularities are not a different Quranic reading.

[65] **Translator’s note (L1929):** The Quran quotation repeatedly has missing letters in such words as “those,” “contracts,” “livestock,” “game,” and “Allah.” The translation renders the identifiable wording and does not treat these transcription defects as variant readings. The supplied phrase explicitly reads “a messenger of Allah who came from the territory of war and embraced Islam.” This is anomalous in context and may be corrupt; it has not been silently changed to “their messenger” or simply “a messenger.” In the first preemption report, the subject of “if he refuses” is not explicit. The translation retains that ambiguity rather than replacing the supplied wording with another version of the report.

[66] **Translator’s note (L1930):** The supplied “taking or leaving” uses “am” for “or,” an awkward construction here; the two alternatives remain distinct in translation. The Quran quotation contains the same apparent missing-letter transcription errors as in unit 1929:0. Its final sentence continues in the next unit.

[67] **Translator’s note (L1931):** The opening argument is syntactically corrupt or disordered: “thus invalidating it” is followed by “the contracts,” and contracts whose invalidation is textually established are then described as commanded to be enforced. The translation preserves these conflicting clauses in their supplied order rather than reconstructing the likely intended argument. The repeated Quran quotation contains the same apparent missing-letter transcription errors as the preceding occurrences.

[68] **Hadith references (L1925):** Sahih Muslim 1608c; Sahih al-Bukhari 6951; Sahih Muslim 2586d.

[69] **Qur’an references (L1925):** Qur’an 5:34 (Al-Ma’idah); Qur’an 5:1 (Al-Ma’idah).

invalidate it, then says, 'I waive the condition,' that is permissible and the sale becomes valid." They say: "But if he concludes a sale with payment deferred to an unknown date, then says, 'I will make the price payable immediately and waive the deferral,' that is not permissible, and the sale is invalid." They say: "If someone buys a slave on condition that he emancipate him, that is permissible and binding upon him. He may not return him because of a defect he discovers in him, but may receive compensation for the defect." They say: "But if he emancipates him on condition that he not leave him, that is not permissible."

They say: "If someone says to another, 'Sell me your slave for emancipation for forty dinars,' and he replies, 'No, rather for fifty dinars,' and the purchaser refuses, whereupon the slave says to his master, 'Sell me to him for forty dinars, and I will enter into an agreement with you and bind myself by a condition to pay you the additional ten dinars, and have witnesses attest this for you'; then the master agrees, and the slave voluntarily undertakes to pay the ten dinars and calls witnesses to attest his obligation; then the purchaser buys the slave and emancipates him—nothing whatsoever of what the slave bound himself to by agreement and had witnesses attest is binding upon him." They say: "But if he says to his slave, 'You are free, and you owe fifty dinars,' that is permissible, and the slave must pay them whether he wishes to or not." They say: "If someone agrees with his slave that he will serve him for this year, beginning with such-and-such a month, 'then you are free,' and the slave accepts that obligation, but then the slave [apparently: absconds] for that entire year, they say: 'He is free, and none of the stipulated service is binding upon him.' We have already mentioned their position on preemption. They say concerning someone who sells the fruit of his orchard and stipulates to the purchaser, binding himself, that he will not bring a claim for crop calamity if it is stricken, and then it is stricken: 'That condition is not binding upon him, and he may bring a claim for crop calamity.' Then they say concerning a sick man who consults his heirs about bequeathing more than a third of his property, while they are not under his guardianship, and they permit him to do so, whereupon he bequeaths more than a third

متى فعل أمرا كذا فمحو كتابته بيد سيده، ففعل المكاتب ذلك الشيء، وأقر بفعله، أو قامت عليه بذلك بينة: قالوا: هذا شرط لا يلزم ولا يكون محو كتابته إلى سيده لكن إلى السلطان. ثم قالوا: إن حكم خصمان بينهما رجلا من عرض المسلمين لا سلطان له، فحكم بينهما برضاهما، ثم امتنع أحد الخصمين، قالوا: ذلك الحكم لازم لهما ورضاهما به أو لا جائز عليهما. وهذا كله ينقض بعضه بعضا، قالوا: فإن شرط على مكاتبه وصفاء غير موصوفين، قالوا: ذلك شرط جائز لازم، قالوا: فإن تشارطا برضا منهما أن ما ولد للمكاتب بل تمام أداء كتابته من ولد، فإنهم غير داخلين في الكتابة. قالوا: هذا شرط لا يلزم ولا يجوز هذا هو قولهم إن المكاتب عبد ما بقي عليه درهم، وأنه إن عجز عاد رقيقا، قالوا: فإن شرط على مكاتبه أضاحي مسماة، وعملا معروفا. وخدمة محدودة وكسوة، ثم أدى بالمكاتب نجومه مجموعة قبل حلول الأجل المشترط، أجبر السيد على قبضها وعجل العتق للمكاتب وبطلت شروطهما في الآجال التي اتفقت الأمة على أنها شروط جائزة لازمة. قالوا: وسقط شرط الخدمة والعمل والسفر بلا عوض يكلفه المكاتب، ولم يسقط شرط الأضحية والكسوة ولا يلزم أيضا، لكن يقول كل ذلك ويدفع قيمته مع ما عجل من نجوم كتابته، فأبطلوا شرط الآجال الذي صححه الله تعالى بلا دليل، وتكلموا في سائر الشروط، فأبطلوا بعضها وعوضوا من بعضها كل ذلك تحكم بلا دليل، ولكن تناقض لا معنى له. فإذا تعلقوا في إسقاط أجل المكاتب بعمر بن الخطاب إذ أجبر أنسا على تعجيل عتق مكاتبه، إذ عجل له النجوم كلها قيل لهم هذا: عجب من العجب، هذه قضيتان اختلف فيهما عمر وأنس، فخالفتم عمر حيث لا يحل خلافه، واتبعتم أنسا في إحدى القضيتين، ثم خالفتم أنسا حيث لا يحل خلافه في القضية الثانية وتعلقتم بعمر، وذلك أن عمر أجبر أنسا على مكاتبة سيرين فكان القرآن يشهد لعمر في هذه القضية بالصواب بقوله تعالى {وليستعفف لذين لا يجدون نكاحا حتى يغنيهم لله من فضله ولذين يبتغون الكتاب مما ملكت أيمانكم فكاتبوهم إن علمتم

and then dies: 'What they undertook is binding upon them, and they have no right to challenge it.'

Abu Muhammed said: This is an inversion of realities, a permitting of what is impermissible, a making lawful of what Allah Most High has forbidden, and an invalidation of that whose alternative alone is impermissible.

They say: 'If a slave contracted to purchase his freedom and his master mutually agree and stipulate that, whenever the slave does such-and-such a thing, cancellation of his emancipation contract will be at his master's discretion, and the slave does that thing and admits doing it, or testimony establishes it against him, this condition is not binding: cancellation of his emancipation contract is not for his master to decide, but for the governing authority.' Then they say: 'If two litigants appoint as arbitrator between them an ordinary Muslim man who holds no governing authority, and he adjudicated between them with their consent, but then one of the two litigants refused, they said: "That judgment is binding upon them both, and their initial consent to him is effective against them both." All of this contradicts itself. They said: "If he stipulates that his slave under a contractual manumission agreement must provide young slaves whose characteristics are unspecified," they said, "that is a valid and binding stipulation." They said: "If the two mutually agree that any children born to the slave under contractual manumission before he completes payment under his manumission agreement are not included in that agreement," they said, "this stipulation is neither binding nor permissible." This accompanies their assertion that a slave under contractual manumission remains a slave so long as he owes a single dirham, and that if he defaults he returns to slavery. They said: "If he stipulates that his slave under contractual manumission must provide specified sacrificial animals, specified work, a defined period of service, and clothing, and then the slave under contractual manumission pays all his installments together before the stipulated deadline, the master is compelled to accept them, the slave's emancipation is brought forward, and their stipulations concerning the payment dates are annulled, although the community has agreed that these are valid and binding stipulations." They said: "The stipulation concerning service, work, and travel lapses without any compensation being imposed upon the

فيهم خيرا وآتوهم من مال الله لذي آتاكم ولا تكرهوا فتياتكم على لبغآء إن أردن تحصنا لتبتغوا عرض لحياة لدنيا ومن يكرههن فإن الله من بعد إكراههن غفور رحيم} فخالفتم عمر وقلتم: لا يجوز أن يجبر السيد على مكاتبة عبده، وإن علم فيه كل خير ثم أجبر عمر أنسا على إسقاط الآجال في المكاتب، وتعجيل عتقه إذا عجل المكاتب كل ما عليه، وأنس يأبى ذلك، والنص يشهد لأنس في هذه القضية بالصواب، لأن هذا العقد في الآجال المشترطة في الكتابة داخلة في العقود التي اجتمعت الأمة على جوازها، فهي داخلة في عموم قوله تعالى {ولا تقربوا مال ليتيم إلا بلتي هي أحسن حتى يبلغ أشده وأوفوا بالعهد إن لعهد كان مسؤولا} وكل عقد صح بنص أو إجماع فلا يجوز إبطاله إلا بنص آخر أو إجماع ولا نص ولا إجماع على إسقاط آجال المكاتب بتعجيل ما عليه، فخالفتم أنسا في هذه القضية، وخالفتم عمر في الأولى فلو قيل لكم: اجتهدوا في الخطأ، ما أمكنكم أكثر من هذا. قالوا: ومن وطىء مكاتبته فحملت، خيرت بين التمادي على المكاتبة وبين إسقاطها، ويذهب الشرط والعقد ضياعا. قالوا: ومن كان له على آخر دين إلى أجل من طعام وذهب، إلى أجل مسمى فأتاه بهما قبل الأجل. قالوا: يجبر على قبض الذهب قبل الأجل، ولا يجبر على قبض الطعام إلا حتى يحين الأجل. فمرة يثبتون الشروط ويحتجون ب {يا أيها الذين آمنوا أوفوا بالعقود أحلت لكم بهيمة الأنعام إلا ما يتلى عليكم غير محلي الصيد وأنتم حرم إن الله يحكم ما يريد} والمسلمون عند شروطهم ومرة يبطلون كل ذلك كيفما وافقهم. قالوا: ومن كان له على آخر دين إلى أجل مسمى أو حال فقال له: أنا أنظرك بالدين الذي لي عليك إلى عشرة أيام بعد الأجل الذي هو إليه، وأهبك غدا دينارا، قالوا: يقضى عليه بالتأخير شاء أم أبى ولا يقضى عليه بالهبة الدينار الذي ذكر أصلا. قالوا: ولو قال لغريمه: جئني بحقي قبلك، والحق حال لا مؤجل، وأنا أهبك نصفه فأتاه به، لزمه ما وعده أن يهبه وقضى عليه بذلك. قالوا: ولو قال: مالي في المساكين صدقة. لزمه ثلث ماله ولم يقض

slave under contractual manumission, whereas the stipulation concerning the sacrificial animal and clothing does not lapse; nor is he obliged to provide them either. Rather, he says all of that and pays its value together with the installments of his manumission agreement that he has paid early." Thus, without any proof, they annulled the stipulation concerning payment dates that Allah Most High had validated. They pronounced upon the remaining stipulations, annulling some and substituting compensation for others. All of this is arbitrary ruling without proof; indeed, it is meaningless contradiction. If, in cancelling the payment term of a slave under contractual manumission, they appeal to Umar ibn al-Khattab, because he compelled Anas to bring forward his slave's emancipation when the slave paid him all the installments early, they are to be told: "This is astonishing indeed! These are two cases in which Umar and Anas disagreed. You opposed Umar where opposing him was impermissible, and followed Anas in one of the two cases; then, in the second case, you opposed Anas where opposing him was impermissible, and appealed to Umar. For Umar compelled Anas to enter into a contractual manumission agreement with Sirin, and the Quran testified that Umar was correct in this case, through the words of the Most High: 'Let those who cannot find the means to marry remain chaste until Allah enriches them out of His bounty. And those among those whom your right hands possess who seek a written manumission agreement: enter into such an agreement with them if you know good in them, and give them out of the wealth of Allah that He has given you. And do not compel your slave girls to prostitution, if they desire chastity, seeking the transient goods of the life of this world. And whoever compels them—then Allah, after their compulsion, is forgiving, merciful.' Yet you opposed Umar and said: 'A master may not be compelled to enter into a contractual manumission agreement with his slave, even if he knows every good quality in him.' Then Umar compelled Anas to cancel the payment terms in the contractual manumission agreement and bring forward the slave's emancipation if the slave paid everything he owed early, while Anas refused to do that. The revealed text testifies that Anas was correct in this case, because this contract, with its stipulated payment dates for contractual manumission, falls among the contracts whose permissibility the community has unanimously accepted. It therefore falls within the general

عليه به أن يتصدق بالثلث، فإن فرط حتى تلف الثالث، ولم يؤمر أن يتصدق منه بشيء، قالوا: فلو تصدق على إنسان معين بدار، قضي عليه بذلك، قالوا: فلو قال: داري هذه صدقة على زيد، أو قال على المساكين إن دخلت دار عمرو، فدخلها عامدا ذاكرا ليمينه، قالوا: لا يقضى عليه بشيء ولا يحكم عليه بإمضاء ما تصدق به لا للمعين ولا للمساكين، قالوا: ولو قال ذلك في غير يمين قضي عليه بإمضاء ما تصدق به على المعين.

scope of the words of the Most High: 'Do not approach the orphan's property except in the best manner, until he reaches maturity. And fulfill the covenant: indeed, the covenant will be asked about.' Any contract established as valid by a revealed text or consensus may be annulled only by another revealed text or consensus. There is neither a revealed text nor a consensus authorizing cancellation of the payment terms of a slave under contractual manumission when he pays what he owes early. Thus you opposed Anas in this case and opposed Umar in the first. Had you been told, 'Exert yourselves to reach an erroneous result,' you could have done no more than this!" They said: "If someone has intercourse with his female slave under contractual manumission and she becomes pregnant, she is given the choice between continuing under the manumission agreement and cancelling it," and the stipulation and contract go to waste. They said: "If someone is owed a debt by another, consisting of food and gold due at a specified term, and the debtor brings him both before the term," they said, "he is compelled to accept the gold before the term, but he is not compelled to accept the food until the term arrives." Thus, at one time they uphold stipulations and invoke as proof: "O you who believe, fulfill contracts. Permitted to you are livestock animals, except what is recited to you, without treating game as lawful while you are in a state of pilgrimage consecration. Indeed, Allah rules as He wills," and "Muslims are bound by their stipulations"; at another time they annul all of that however it suits them. They said: "If someone is owed a debt by another, whether due at a specified term or payable immediately, and says to him, 'I grant you respite for the debt you owe me until ten days after its present due date, and tomorrow I shall give you a dinar,'" they said, "a judgment enforcing the postponement is issued against him, whether he wishes it or not, but no judgment whatsoever is issued against him enforcing the gift of the dinar he mentioned." They said: "If he says to his debtor, 'Bring me what you owe me'—the debt being payable immediately, not deferred—'and I shall give you half of it,' and he brings it to him, he is bound by what he promised to give him, and judgment is issued against him accordingly." They said: "If he says, 'My wealth is a charitable gift to the poor,' he is obliged to give a third of his wealth, but no judgment is issued against him requiring him to give the third in charity. Then, if he neglects to do so until the third is lost, he is

not ordered to give any of it in charity." They said: "If, however, he gives a house in charity to a specified person, judgment is issued against him to that effect." They said: "If he says, 'This house of mine is a charitable gift to Zayd,' or says, 'to the poor, if I enter Amr's house,' and then enters it deliberately, remembering his oath," they said, "no judgment is issued against him for anything, nor is he ordered to carry out the charitable gift he declared, whether to the specified person or to the poor." They said: "If he says that outside the context of an oath, judgment is issued against him requiring him to carry out the charitable gift he declared to the specified person."[70717273747576]

[70]**Translator's note (L1932):** The slave's words begin with "yaʿni minhu" in the supplied text, literally an incoherent "meaning, from him." The context strongly suggests "biʿni minhu," "sell me to him," which is the explicitly identified reading used in translation.

[71]**Translator's note (L1933):** The supplied verb is "fa-abqa," which ordinarily means "then he kept" or "then he caused to remain" and lacks an object here. The context suggests "fa-abaqa," "then he absconded"; that conjectural sense is visibly marked in the translation. The crop-calamity example grammatically makes the seller bind himself to forgo a claim, although the right to claim a reduction for calamity would ordinarily concern the purchaser. The supplied allocation of speakers and obligations has been retained. The final authorial accusation literally concerns invalidating "that besides which nothing is permissible"; its force is that they invalidate the only permissible course.

[72]**Translator's note (L1935):** The wording «ورضاهما به أو لا جائز عليهما» is awkward. The translation understands «أو لا» as a defective transcription of «أولا», referring to their initial consent; as separately written, it could instead suggest "or not," but leaves the syntax unclear. «وصفاء» denotes young male slaves or slave attendants. The source reads «بل تمام» rather than the contextually expected «قبل تمام», "before completion." The translation follows that apparent intended reading and records the defect here. «أدى بالمكاتب» is syntactically irregular; the translation takes the slave under contractual manumission as the person making payment.

[73]**Translator's note (L1936):** The opening continues the negative construction begun at the end of the preceding unit. The source reads «يقول كل ذلك», literally "he says all of that," which is retained. The context of paying a monetary equivalent suggests a possible corruption of «يقوّم كل ذلك», "he assesses the value of all of that." The Quran quotation contains repeated defective spellings, including missing initial alifs in forms corresponding to "Allah," "those," and the definite article. These do not yield a distinct translatable wording.

[74]**Translator's note (L1938):** The Quran quotation concerning the orphan's property contains defective spellings of words corresponding to "the orphan," "that which," and "the covenant"; these do not produce a distinct translatable reading.

قالوا: فلو قال عبدي حر إن دخلت دار عمرو، فدخلها قضي عليه بعتق العبد. قالوا: ولو قال في نذر: إن جاء أبي سالما فعلي أن أعتق عبدي هذا حرا لله، فجاء أبوه سالما، لم يقض عليه بعتق ذلك العبد، فلو قال: إن اشتريت عبد فلان فهو حر، فاشتراه، قالوا يقضى عليه بعتقه وهذا ضد النص وضد حكم النبي صلى الله عليه وسلم إذ يقول من نذر أن يطيع الله فليطعه وإذ يقول عليه السلام: إنه لا نذر فيما لا يملك ابن آدم، فقضوا هم عليه بإمضاء النذر فيما لم يملك، إذ نذره ولم يقضوا عليه بالطاعة التي ألزمه الله تعالى إمضاءها والوفاء بها. قالوا: فلو قال: أنا أهبك غدا درهما لم يقض عليه بذلك، قالوا: ولو قال له: إن تبع هذا الثوب أنا أقويك بثمنه وبدرهم أهبه لك، قالوا: يقضى عليه بذلك، قالوا: ومن شرط لامرأته أن لا يرحلها، ولا يتسرى عليها، ولا يتزوج عليها، لم يلزمه شيء من ذلك، وجاز له النكاح، وله أن يرحلها ويتسرى عليها، ويتزوج، قالوا: فلو زاد في كل ذلك فإن فعل فأمرها بيدها، أو قال: فالسرية حرة والداخلة بنكاح طالق، فإن كل ذلك يلزمه ويقضى عليه به. قال أبو محمد: وليس في التلاعب أكثر من هذا، قالوا: ومن شرط على نفسه نفقة امرأة ولده الناكح، ولم يلزمه في الكبير وثبت النكاح، واختلفوا في لزوم ذلك في امرأة الصغير. قالوا: فإن تزوج امرأة على أنه إن جاء بصداقها المسمى إلى أجل مسمى فذلك وإلا فلا نكاح بينهما. فسخ أبدا جاء بالصداق إلى ذلك الأجل أو لم يجيء، هذا مع قولهم إن من شرط في البيع شرطا يفسده فرضي إسقاط الشرط صح البيع، وهم يقولون: إن البيوع تشبه النكاح، حتى إنهم أبطلوا النكاح حين النداء إلى الجمعة قياسا على بطلان البيع حينئذ، ثم قالوا: فإن تزوجها بصداق مسمى إلى الميسرة، فإن رضي بإسقاط الشرط عجل الصداق جاز النكاح، وإن أبى من إسقاط الشرط فسخ النكاح. قالوا: ومن قال لآخر: إن جئتني بأمر كذا في وقت كذا فقد زوجتك ابنتي فلانة فأتى بذلك الشيء في ذلك الوقت، قالوا: لا يجوز له أن يفي بهذا الشرط، فإن أنكحه بذلك الشرط فسخ النكاح

L1941–1946 They said: “If he says, ‘My slave is free if I enter Amr’s house,’ and then enters it, judgment is issued against him requiring the slave’s emancipation.” They said: “If, in making a vow, he says, ‘If my father returns safely, I am obliged to emancipate this slave of mine, making him free for Allah’s sake,’ and his father returns safely, no judgment is issued against him requiring that slave’s emancipation. But if he says, ‘If I buy so-and-so’s slave, he is free,’ and then buys him,” they said, “judgment is issued against him requiring his emancipation.” This contradicts the revealed text and contradicts the ruling of the Prophet, may Allah bless him and grant him peace ﷺ, when he says, “Whoever vows to obey Allah, let him obey Him,” and when he says, peace be upon him, “There is no vow concerning what the son of Adam does not own.” Thus they issued judgment against him requiring fulfillment of a vow concerning something he did not own when he vowed it, while they did not issue judgment against him requiring the act of obedience that Allah Most High had obliged him to carry out and fulfill. They said: “If he says, ‘Tomorrow I shall give you a dirham,’ no judgment is issued against him requiring that.” They said: “But if he says to him, ‘If you sell this garment, I shall assist you with its price and with a dirham that I shall give you,’” they said, “judgment is issued against him requiring that.” They said: “If someone stipulates for his wife that he will not relocate her, take a concubine in addition to her, or marry another wife in addition to her, none of that is binding upon him, his marriage is valid, and he may relocate her, take a concubine in addition to her, and marry another wife.” They said: “But if he adds to all of that, ‘If he does so, her affair is in her own hands,’ or says, ‘Then the concubine is free, and the woman entering the marriage is divorced,’ all of that is binding upon him, and judgment is issued against him accordingly.” Abu Muhammed said: There can be no greater manipulation than this. They said: “If someone stipulates that he himself

[75] **Translator’s note (L1939):** The wording «فإن فرط حتى تلف الثالث ولم يؤمر» is irregular: it literally refers to “the third” with the ordinal «الثالث», rather than the expected fractional «الثلث», and includes an awkward conjunction before “he is not ordered.” The translation renders the apparent contextual sense while recording these defects.

[76] **Qur’an references (L1932):** Qur’an 24:33 (An-Nur); Qur’an 17:34 (Al-Isra); Qur’an 5:1 (Al-Ma’idah).

will maintain the wife of his son who is marrying, this is not binding upon him in the case of an adult son, and the marriage stands." They disagreed over whether this is binding in the case of a minor son's wife. They said: "If he marries a woman on the condition that, if he brings her specified marriage payment by a specified deadline, so be it, but otherwise there is no marriage between them, the marriage must invariably be annulled, whether he brings the marriage payment by that deadline or does not bring it." Yet they also say that, if someone stipulates a condition in a sale that invalidates it, and then agrees to drop the condition, the sale is valid. They say that sales resemble marriage, to the point that they invalidated marriage at the time of the call to Friday prayer by analogy with the invalidity of a sale at that time. Then they said: "If he marries her for a specified marriage payment deferred until he has the means, then, if he agrees to drop the condition and pays the marriage payment immediately, the marriage is valid; but if he refuses to drop the condition, the marriage is annulled." They said: "If someone says to another, 'If you bring me such-and-such a thing at such-and-such a time, I have married my daughter so-and-so to you,' and he brings that thing at that time," they said, "he may not fulfill this condition. If he marries her to him on that condition, the marriage must invariably be annulled." They said: "If someone marries his female slave to another person's male slave, and the two mutually stipulate that whatever children she bears shall be free, the marriage is annulled, and her master is obliged to emancipate the children she bears pursuant to the condition." They said: "But if the two mutually stipulate that whatever offspring she bears shall be enslaved and jointly owned by the two of them, they say: The marriage takes effect and stands, the child is enslaved and belongs to the slave woman's master, and the condition is void. Thus, in the first case the marriage was invalid and the condition stood, whereas in the second the reverse applied: the marriage stood and the condition was void. They say: If he marries a woman on condition that she receive such-and-such an amount of maintenance, and then consummates the marriage with her, they say: The condition is void, the marriage takes effect, and she is entitled to the maintenance received by women of her standing. They say: If he marries her on condition that control over her marital status be in her own hands if he marries another woman alongside her, they say: The

أبدا، قالوا: ومن زوج أمته عبد غيره وتشارطا أن ما ولدت فهو حر، فسخ النكاح ولزم سيدها تحرير ما ولدت بالشرط، قالوا: فلو تشارطا أن ما ولدت فهو رقيق بينهما، قالوا: ينفذ النكاح ويثبت والولد رقيق لسيد الأمة، ويبطل الشرط ففي الأول بطل النكاح وثبت الشرط، وفي الثانية عكس ذلك، وهو ثبات النكاح وبطلان الشرط، قالوا: فلو تزوج المرأة على أن لها من النفقة كذا وكذا، فدخل بها، قالوا: بطل الشرط وينفذ النكاح، ولها نفقة أمثالها. قالوا: فلو تزوجها على أن أمرها بيدها إن تزوج عليها، قالوا: يثبت النكاح ويثبت الشرط ويكون أمرها بيدها إن تزوج. قالوا: إن تزوجها على ألا ينفق عليها ورضيت بذلك، وأشهدت على نفسها، فدخل بها ثم بدا لها، قالوا: ذلك لها ولا يلزم ذلك الشرط، ويقضى لها عليه بالنفقة. قالوا: فلو تزوج امرأة على مائة، فلما هموا بالفراغ قالوا: يضع لك خمسين على ألا تخرجها من دارها، أو قالوا: من ولدها، فقال: نعم، فزوجوه على ذلك الشرط، وهو راض وهي راضية وتشاهدوا، ثم بدا له فأراد إرحالها، قالوا: ذلك له، ويوفيها المائة الكاملة، ولا يلزم واحدا منهما ما تشارطاه، فلو قالت له: أتزوجك بمائة وأضع عنك خمسين على أن تخرجني. فقال: نعم، وتشاهدا على ذلك، فلما تزوجها أراد أن يرحلها قالوا: فذلك له شرط على نفسه في ألا يرحلها مفسوخ، وشرطها على نفسها فيما أسقطت عنه من الخمسين لازم لها لا ترجع عليه بشيء، قالوا: فلو قال لها: إن رحلتك فأمرك بيدك، فذاك لازم له، قالوا: ولو قال لها: إن غبت عنك سنة فأمرك بيدك، فله أن يطأها قبل أن يغيب، ولا يسقط بذلك ما جعل لها من الشرط، قالوا: فلو قال لها وهي حامل: إذا وضعت حملك فأمرك بيدك، قالوا: فإن وطئها بعد هذا القول وقبل أن تضع حملها فقد سقط ما جعل من لها الشرط. وقالوا: من خالع امرأته على أن عليها نفقة ولدها ست سنين، لم يلزمها من ذلك إلا رضاع سنتين فقط، ثم تعود النفقة على الأب، ويسقط عنها ما شرطت على نفسها، قالوا: فإن طلقها طلقة سنة فأعطته مالا على أن لا رجعة له عليها،

marriage stands and the condition stands, and control over her marital status is in her own hands if he marries another woman. They say: If he marries her on condition that he provide her no maintenance, and she agrees to that and has her undertaking witnessed, and he consummates the marriage with her, but she subsequently changes her mind, they say: She is entitled to do so, that condition is not binding, and a judgment shall be issued in her favor against him for maintenance. They say: If he marries a woman for a marriage payment of one hundred, and, as they are about to conclude the arrangement, they say, "He will remit fifty for you on condition that you do not remove her from her house"—or they say, "from her children"—and he says, "Yes," and they marry her to him on that condition, with both him and her consenting, and they have witnesses attest it, but he subsequently changes his mind and wishes to relocate her, they say: He is entitled to do so, and he must pay her the full hundred; neither of them is bound by what they stipulated between themselves. If she says to him, "I shall marry you for one hundred and remit fifty for you on condition that you remove me," and he says, "Yes," and the two have this witnessed, but, after marrying her, he wishes to relocate her, they say: He is entitled to do so. The condition he imposed upon himself that he would not relocate her is annulled, while the condition she imposed upon herself concerning the fifty she remitted for him is binding upon her, and she may recover nothing from him. They say: If he says to her, "If I relocate you, control over your marital status is in your own hands," that is binding upon him. They say: If he says to her, "If I am absent from you for a year, control over your marital status is in your own hands," he may have intercourse with her before departing, and that does not extinguish the condition he granted her. They say: If he says to her while she is pregnant, "When you deliver your child, control over your marital status is in your own hands," they say: If he has intercourse with her after making this statement and before she delivers her child, the condition he granted her has lapsed. They say: If a man concludes a compensated divorce with his wife on condition that she bear the maintenance of her child for six years, only two years of nursing are binding upon her; maintenance then falls upon the father again, and what she stipulated against herself lapses. They say: If he divorces her with a single divorce in accordance with the Sunnah, and

قالوا: ذلك لازم لها وله، وكأنه خلع، قالوا: فلو تشارطا في الخلع: إنك إن خاصمتني فأنت امرأتي فخاصمته، فإن لها ذلك، والشرط باطل لا يلزم.

she gives him money on condition that he have no right to take her back, they say: That is binding upon both her and him, and it is as though it were a compensated divorce. They say: If, in a compensated divorce, they stipulate, "If you bring a claim against me, you are my wife," and she brings a claim against him, she is entitled to do so, and the condition is void and not binding.[777][879]

L1947–1949 Abu Muhammed said: Why, then, did they not say, "It is binding, and it is as though it were a taking back," just as they said in the preceding case, "It is as though it were a compensated divorce"? They say: If a man owes his wife a debt and concludes a compensated divorce with her on condition that he assign her half the debt and she release him from the remainder, they say: The divorce takes effect, and the release is valid and binding, but she is compelled to return to him what he paid in advance, so that it remains outstanding until its due date. This, although they compel the master of a slave contracted to purchase his freedom, and the creditor, to accept what is paid to them in advance—the opposite of what they did in the woman's case. They say: If a slave woman married to a slave says, "If I am emancipated, I have chosen myself," or says, "I have chosen my husband," and has her undertaking witnessed to that effect, they say: That has no effect and is not binding upon her; she may exercise the option anew if she is emancipated.

قال أبو محمد: فهلا قالوا: هو لازم، وكأنه رجعة، كما قالوا في التي قبلها وكأنه خلع، قالوا: ومن كان لامرأته عليه دين فخالعها على أن يجعل لها نصف الدين، وتبرئه من الباقي، قالوا: فالطلاق نافذ، والإبراء جائز لازم وتجبر على أن ترد إليه ما عجل فيبقى إلى أجله، هذا وهم يجبرون سيد المكاتب والغريم على قبض ما عجل لها، بضد ما فعلوه في المرأة قالوا: وإن قالت أمة تحت عبد: إن أعتقت فقد تخيرت نفسي أو قالت: فقد تخيرت زوجي، وأشهدت على نفسها بذلك، قالوا: فليس ذلك بشيء، ولا يلزمها، ولها استئناف الخيار إن أعتقت، وهم يقولون في عبد أو حر قال: إن تزوجت فلانة فهي طالق، أو قال: كظهر أمي. فتزوجها القائل ذلك، فهي طالق وكظهر أمه، ويقولون في قائل قال: إن وكلني زيد بطلاق امرأته فلانة فهي طالق، فوكله زيد بطلاق تلك المرأة، إنها لا تكون طالقا إلا أن يحدث لها الوكيل طلاقا إن شاء، وإلا فلا، ويقولون في قائل قال: متى طلقت زوجتي أو قال: إن طلقت زوجتي هذه فهي مراجعة مني، فطلقها، قالوا: لا تكون مراجعة بذلك، إلا أن يحدث لها رجعة إن شاء. قالوا: ومن باع جارية على أن تعتق فذلك جائز لازم، قالوا: فإن باعها على أن لا تباع، قالوا: لا يجوز ويفسخ البيع إلا أن يرضى البائع إسقاط الشرط فيتم البيع ويسقط الشرط. وقالوا: ومن باع بثمن مجهول فسخ البيع، فإن باع نصف جارية له من زيد، واشترط على المشتري نفقتها سنة، قالوا: إن كان ذلك ثابتا في الحياة والموت جاز الشرط، وليس في الثمن المجهول أكثر من هذا لاختلاف الشبع، وتناول النفقة في الصحة والمرض، قالوا: ومن باع سلعة بثمن مسمى على أن يتجر له في ثمنها سنة، فلا بأس

[77] **Translator's note (L1941):** In «إن تبع هذا الثوب», the unvocalized form «تبع» is understood as the second-person conditional "if you sell." The promise to assist the recipient "with its price" is awkward without further transactional context; the wording is retained.

[78] **Translator's note (L1942):** "Her affair is in her own hands" is a technical formula granting the wife authority to choose divorce. The source shifts from the husband's first-person undertaking to «فإن فعل», "if he does so"; the translation preserves that shift. «ومن شرط على نفسه نفقة امرأة ولده الناكح ولم يلزمه» contains an awkward extra conjunction before "this is not binding upon him." The translation supplies the apparent syntactic connection without treating the wording as sound.

[79] **Translator's note (L1945):** The source says "He will remit fifty for you," although the surrounding context appears to concern a remission by the woman or her representatives; the masculine wording is retained. The source reads "on condition that you remove me," but subsequently describes the husband's undertaking as a condition that he would not relocate her. This apparent inconsistency is retained. The wording ما جعل من لها الشرط is syntactically disordered; it has been rendered as referring to the condition he granted her.

Yet they say of a slave or a free man who says, “If I marry such-and-such a woman, she is divorced,” or says, “She is like my mother’s back,” and then the person who said this marries her: She is divorced and is like his mother’s back. They say of someone who says, “If Zayd appoints me his agent to divorce his wife, such-and-such a woman, she is divorced,” and Zayd then appoints him his agent to divorce that woman: She is not divorced unless the agent subsequently pronounces a divorce upon her, if he wishes; otherwise, she is not. They say of someone who says, “Whenever I divorce my wife,” or says, “If I divorce this wife of mine, she is taken back by me,” and then divorces her, they say: She is not taken back by that statement unless he subsequently effects a taking back, if he wishes. They say: If someone sells a slave woman on condition that she be emancipated, that is valid and binding. They say: If he sells her on condition that she not be sold, they say: That is impermissible, and the sale is rescinded unless the seller agrees to drop the condition; the sale is then completed and the condition lapses. They say: If someone sells for an unknown price, the sale is rescinded. Yet if he sells half of a slave woman he owns to Zayd and stipulates that the purchaser provide her maintenance for a year, they say: If that obligation remains established in life and death, the condition is valid. Yet an unknown price involves nothing beyond this, given the differences in how much satisfies her hunger and in the maintenance she consumes in health and sickness. They say: If someone sells an item for a specified price on condition that the purchaser trade on his behalf with its price for a year, there is no harm in that, provided that it remains his responsibility: if the price is lost, he replaces it with something else. Yet they do not permit an investment partnership for a fixed term. They say: If someone knows the measured quantity of a heap of food he owns, and a purchaser buys it from him as an unmeasured bulk quantity, and the purchaser says to him, “I do not care whether you, the seller, know its measured quantity or do not know it; let us transact on that basis,” they say: This condition is not binding upon the purchaser, and he may return it if he wishes. They say: If, however, the seller did not know its measured

بذلك، إذا كان ذلك ثابتا عليه إن تلف الثمن أخلف مكانه غيره، وهم لا يجيزون القراض إلى أجل. قالوا: من عرف كيل صبرة له من طعام، فابتاعها منه مبتاع جزافا وقال له المشتري: ما أبالي عرفت أنت أيها البائع كيلها أم لم تعرف، فتبايعنا على ذلك، قالوا: فلا يلزم هذا الشرط المشتري، وله أن يرد إن شاء، قالوا: فلو لم يعلم البائع كيلها فباعها جزافا قالوا: فذلك للمشتري لازم ولا رد له.

quantity and sold it as an unmeasured bulk quantity, they say: That is binding upon the purchaser, and he has no right to return it.[80][81]

L1950–1962 Their contradictions concerning which contracts and conditions they hold binding and which they do not are too numerous to enumerate or encompass except over a long period. What we have mentioned suffices for anyone who understands. The Hanafis are like them in this respect. Success comes through Allah Most High. Abu Muhammed said: Since demonstration has been established through everything we have mentioned, it necessarily follows that every contract or condition, pledge, or vow that a person undertakes is without effect and rejected, and nothing whatsoever of it is binding upon him, unless a text or consensus establishes that the very thing he undertook, specifically and by name, is binding upon him. If a text or consensus establishes that, it binds him; otherwise, it does not. The presumption is that persons are free of any binding obligations whatsoever except those imposed upon us by a text or consensus. If a judge rules contrary to what we have said, his judgment is to be rescinded and rejected by the command of the Prophet, may Allah bless him and grant him peace ﷺ, who says: "Whoever performs an act that does not conform to our command, it is rejected." Abu Muhammed, Abu Muhammed said: Since everything we have mentioned has been established by necessary demonstrations, it has been established that anything that cannot be valid without a particular attribute, condition, and contract—if that attribute, condition, and contract are invalid at the time of contracting—can never be valid, and that contract is void and is always

[80] **Translator's note (L1947):** The source reads يجعل, "assign" or "make," although the subsequent reference to advance payment suggests that يعجل, "pay in advance," may have been intended. The source's وتجبر appears corrupt; the translation follows the contextual sense "she is compelled." The pronoun in ما عجل لها is singular feminine, literally "what is paid to her in advance," although the preceding subjects are the master and the creditor. The contextual reference is reflected in the translation.

[81] **Translator's note (L1948):** "Like my mother's back" is the formula of the marital prohibition known as ẓihār; the source repeats the formula alongside divorce, and both are retained. "In life and death" does not expressly identify whose life or death is meant. The phrase "let us transact on that basis" renders فتبايعنا على ذلك as part of the purchaser's speech; the unvocalized wording can also be read as a statement that the transaction took place on that basis.

وتناقضهم فيما يلزمونه من العقود والشروط، وما لا يلزمونه منها، أكثر من أن يحصى أو يحاط به إلا في المدة الطويلة، وفيما ذكرنا كفاية لمن عقل، والحنفيون مثلهم في ذلك، وبالله تعالى التوفيق. قال أبو محمد: فلما قام البرهان بكل ما ذكرنا، وجب أن كل عقد أو شرط أو عهد أو نذر التزمه المرء فإنه ساقط مردود، ولا يلزمه منه شيء أصلا، إلا أن يأتي نص أو إجماع على أن ذلك الشيء الذي التزمه بعينه واسمه لازم له، فإن جاء نص أو إجماع بذلك لزمه وإلا فلا، والأصل براءة الذمم من لزوم جميع الأشياء إلا ما ألزمنا إياه نص أو إجماع، فإن حكم حاكم بخلاف ما قلنا فسخ حكمه وورد بأمر النبي صلى الله عليه وسلم إذ يقول من عمل عملا ليس عليه أمرنا فهو رد. قال أبو محمد: أبو محمد فإذ قد ثبت كل ما ذكرنا بالبراهين الضرورية، فقد ثبت أن كل ما لا يصح بصفة ما وشرط ما، وعقد ما، ففسدت تلك الصفة وذلك الشرط وذلك العقد في حين التعاقد، فإن ذلك الشيء لا يصح أبدا، ويبطل ذلك العقد ويفسخ أبدا لأن ما تعلقت صحته بما لا يجوز فلا صحة له، إذ لم يصح ما لا تمام له إلا به، وهذا أمر يعم بالضرورة، وبذلك وجب إبطال كل نكاح انعقد بشرط فاسد أو بصفة فاسدة، وكذلك كل بيع انعقد على ما لا يجوز فإن كل ذلك يفسخ أبدا، ووجب بذلك بطلان كل صلاة صليت في مكان مغصوب يعلم المصلي فيه أنه مغصوب، وكل صلاة فعل فيها المرء ما لا يجوز له، وبذلك حرمت ذبيحة الغاصب والسارق والمعتدي وبسكين مغصوبة، وبالله تعالى التوفيق. وصح بهذا كله أن كل عقد أو عهد أو نذر أو شرط أوجبها أو أباح إيجابها نص، فإنها نافذة لازمة، فمن ادعى سقوط شيء من ذلك فقوله باطل وكل ذلك باق بحسبه لازم كما كان، إلا أن يأتي مدعي بطلانه بنص على بطلانه، فيجب الوقوف حينئذ عند ما أوجبه النص، مثال ذلك: أن الإجارة

to be rescinded. For anything whose validity depends upon something impermissible has no validity, since that without which it cannot be complete was not valid. This is necessarily a universal principle. Consequently, every marriage concluded with an invalid condition or an invalid attribute must be invalidated, as must every sale concluded on an impermissible basis: all of these are always to be rescinded. Consequently, every prayer performed in a usurped place, when the person praying knows that it is usurped, is invalid, as is every prayer during which a person does something impermissible for him. On this basis, too, an animal slaughtered by a usurper, a thief, or a transgressor, or with a usurped knife, is forbidden. Success comes through Allah Most High. Through all this it is established that every contract, pledge, vow, or condition that a text makes obligatory, or permits one to make obligatory, takes effect and is binding. Whoever claims that any of these has lapsed makes a false statement. All of them remain in force according to their respective terms, binding as before, unless the person claiming their invalidity produces a text establishing that invalidity; then one must adhere to what the text requires. An example is that hire is a contract whose permissibility, and the permissibility of undertaking it, are established by a text; and the evidence from the text has been established and consensus that hire without a term and without specified work is void, rejected, and impermissible, because it constitutes consuming wealth wrongfully. Hire on the basis we have described is forbidden and rejected by the consensus of the entire community, both those who permit hire and those who prohibit it, and by the text. Hire must necessarily be either for a known term or without a term, and there is no possibility of a division third alternative in any respect. Since one of the two aforementioned alternatives has been invalidated, and a revealed text has established the permissibility of leasing, the other alternative must necessarily be valid. Thus the obligation to specify a named term in a lease is necessarily established by the revealed text and the two premises drawn from consensus that we have mentioned. Since this has been established, specifying the term in the lease contract is a valid condition. That being so, the contract is established; and what is established now cannot become invalid at a subsequent moment except through a revealed text. It is therefore established that neither the lessor nor the lessee may withdraw from what

عقد قد جاء النص بجوازه وإباحة التزامه، وصح الدليل من النص والإجماع، على أن الإجارة إلى غير أجل وعلى غير عمل محدود باطل مردودة لا تجوز، لأنها أكل مال بالباطل، والإجارة على ما ذكرنا حرام مردودة بإجماع الأمة كلها من مجيز لها ومن مانع منها وبالنص. ولا بد أن تكون الإجارة إلى أجل معلوم، أو إلى غير أجل، ولا سبيل إلى قسم ثالث بوجه من الوجوه، وقد بطل أحد القسمين المذكورين، فوجب ضرورة إذ قد جاء النص بإباحة الإجارة أن يصح القسم الآخر فصح وجوب ذكر الأجل المسمى في الإجارة ضرورة بالنص، وبمقدمتي الإجماع اللتين، ذكرنا فإذ قد صح ذلك فذكر الأجل في عقد الإجارة شرط صحيح، وإذا كان ذلك فقد ثبت عقده، وما ثبت عقده الآن، فلا يبطل في ثان إلا بنص، فصح أن لا رجوع للمؤاجر ولا للمستأجر فيما عقدوه، ما داموا أحياء، وما لم ينتقل ملك الشيء المستأجر عن المؤاجر له، وما كانت عين ذلك الشيء قائمة. فإن انتقل الملك أو مات أحدهما بطل عقد الإجارة لقول الله عز وجل {قل أغير الله أبغي ربا وهو رب كل شيء ولا تكسب كل نفس إلا عليها ولا تزر وازرة وزر أخرى ثم إلى ربكم مرجعكم فينبئكم بما كنتم فيه تختلفون} وليس صحة عقد الإجارة مانعا من إخراج المؤاجر عن ملكه الشيء الذي أجر، وإن أدى ذلك إلى بطلان العقد، لأن البيع مباح له بالنص؛ وليس بيعه ماله نقضا لعقده، وإنما ينقض ذلك العقد ملك غير العاقد للشيء المعقود فيه. قال أبو محمد: وقال بعضهم: أنتم إذا منعتم من نقض عقد الإجارة والكتابة والتدبير والعتق بصفة ثم أجزتم للعاقدين أن يخرجوا عن ملكهم الأعيان التي عقدوا فيها هذه العقود، وذلك مبطل للعقود، فقد تناقضتم وأجزتم إبطالها، قيل لهم وبالله تعالى التوفيق: لم نمنع قط من أن يفعل الإنسان في ماله ما أبيح له قبل العقد الذي عقد فيه. وليس ذلك العقد بمحرم عليه ما كان له حلالا من إخراج ذلك الشيء عن ملكه، ومدعي هذا متحكم في الدين، قائل بغير بيان من الله تعالى، وإذا منعنا أن يفسخ بقوله ما عقد بقوله مما

they have contracted, so long as they remain alive, ownership of the leased thing has not passed from its lessor, and that very thing remains in existence. If ownership passes or either of them dies, the lease contract becomes invalid, because Allah, Almighty and Majestic, says: "Say: Shall I seek a lord other than Allah, when He is the Lord of everything? Every soul earns only against itself, and no burden-bearing soul bears the burden of another. Then to your Lord is your return, and He will inform you concerning that over which you used to differ." The validity of the lease contract does not prevent the lessor from transferring the thing he leased out of his ownership, even if this results in the contract becoming invalid, because selling it is permissible for him by the revealed text. His sale of his property is not a repudiation of his contract; rather, what invalidates that contract is the acquisition of ownership of the thing to which it pertains by someone other than the contracting party. Abu Muhammed said: Some of them have said: "When you prohibit repudiating a lease contract, a contractual self-purchase agreement, an arrangement for emancipation upon the owner's death, or emancipation contingent upon a specified condition, but then permit the contracting parties to transfer out of their ownership the particular things concerning which they concluded these contracts, although that invalidates the contracts, you have contradicted yourselves and permitted their invalidation." They are to be told—and success comes through Allah Most High: We have never prohibited a person from doing with his property what was permissible for him before the contract he concluded concerning it. That contract does not make unlawful for him what was lawful for him, namely transferring that thing out of his ownership. Anyone claiming this arbitrarily legislates in religion, speaking without clarification from Allah Most High. And if we prohibit him from rescinding by his statement what he concluded by his statement, among those contracts he was permitted or commanded to conclude, that is all; rather, this objection applies to those who advocate analogy, by which they prohibit what has been left unmentioned because something else has been commanded to be prohibited. A pledge and other arrangements are alike in what we have mentioned, provided that releasing it from the pledge through sale or emancipation is not prohibited by a text. As for those who deny this, they have contradicted themselves in it with the most flagrant

أبيح له عقده، أو أمر به فقط، وإنما يلزم هذا التعقب القائلين بالقياس، الذي يحرمون به المسكوت عنه، لتحريم المأمور بتحريمه، والرهن وغيره سواء فيما ذكرنا، إذا لم يمنع من إخراجه من الرهن بالبيع والعتق نص. وأما المنكرون لهذا فقد تناقضوا فيه أقبح تناقض وقالوا بما أنكروه علينا يعني أصحاب مالك. فقالوا: لا تقبل شهادة النساء في عتق أصلا، ثم قالوا: إن شهدت امرأتان بدين على زيد لعمرو حلف عمرو معهما، ورد عتق زيد لعبد الذي أعتقه ودين عمرو محيط بماله، فقد أجازوا في رد العتق شهادة النساء، وكذلك قالوا: لو شهدت امرأتان بابتياع زيد وعمرو لأمة كانت تحت زيد، قبلتا مع يمين البائع، وفسخ نكاح الأمة ومثل هذا لهم كثير جدا. قال أبو محمد: ومن استؤجر على عمل معلوم، فهو عقد قد جاء النص بإباحته، واتفق القائلون بالإجارة على لزومه في حين عقده، واختلفوا هل ينفسخ في ثانية أو لا؟ فوجب أن يبقى على ما جاء الدليل به من صحته ما لم يأت نص بفسخه، وهكذا القول في المدبر وفي الموصي بعتقه وفي المعتق بصفه، وفي المكاتب: أنها عقود قد اتفق الناس على ما جاءت به النصوص من صحتها في حين عقدها، وعلى القضاء بها ما لم يرجع العاقد لها فيها، ثم اختلفوا هل لعاقدها فسخها في ثاني عقده إياها أو لا: فوجب ألا يكون له في شيء منها رجوع إلا بنص، ولا نص ولا إجماع في إباحة الرجوع في ذلك، لا بتراضيها ولا بغيره، فلا يجوز أصلا بخلاف المؤاجرة، وكان إخراجه لكل ما ذكرنا عن ملكه جائزا، ويبطل بذلك العقد لانتقال الملك، كما قلنا في الشيء المؤاجر ولا فرق. وأما المكاتب فإنما يخرج عن الملك منه ما لم يؤد خاصة، وفي ذلك المقدار يبطل العقد لا فيما أدى وهو قول علي وروايته عن النبي صلى الله عليه وسلم وقد جاء النص ببيع المدبر وبيع المكاتب ما لم يؤد، فوجب إباحة ذلك وممن رأى للمؤجر والمستأجر أن يفسخ الإجارة أيهما شاء متى شاء قبل الأجل، وإن كره الآخر مسروق وشريح والشعبي، وممن رأى ألا رجوع لموصي في العتق خاصة الأوزاعي والثوري؛ وأما العارية فبخلاف ما ذكرنا،

contradiction and have maintained the very thing they condemned in us—meaning Malik's followers. They said: "Women's testimony is not accepted in emancipation at all." Then they said: "If two women testify that Zayd owes a debt to Amr, Amr swears an oath together with their testimony, and Zayd's emancipation of a slave whom he emancipated is overturned, when Amr's debt encompasses all his property." Thus they have allowed women's testimony in overturning emancipation. Likewise, they said: "If two women testify that Zayd and Amr purchased a female slave who had been married to Zayd, their testimony is accepted together with the seller's oath, and the female slave's marriage is dissolved." They have very many instances like this. Abu Muhammed said: When someone is hired for a specified task, this is a contract whose permissibility has been established by a revealed text. Those who uphold hiring agree that it is binding at the moment it is concluded, but disagree over whether it is dissolved at a subsequent moment. It must therefore remain valid, as the evidence has established, unless a revealed text establishes its dissolution. The same applies to a slave whose emancipation is stipulated to occur upon the owner's death, one whose emancipation is provided for in a will, one whose emancipation is contingent upon a specified condition, and one under a contractual self-purchase agreement. These are contracts concerning which people have agreed with what the revealed texts establish: that they are valid at the moment they are concluded, and that judgment must be given in accordance with them so long as the person who concluded them has not withdrawn from them. They then disagree over whether the person who concluded them may rescind them after concluding them. It follows that he may not withdraw from any of them except through a revealed text. There is neither a revealed text nor consensus permitting withdrawal in this matter, whether by their mutual consent or otherwise, so it is absolutely impermissible, unlike leasing. His transferring any of what we have mentioned out of his ownership is permissible, and the contract becomes invalid thereby because ownership has passed, just as we said concerning the leased thing; there is no difference. As for the slave under a contractual self-purchase agreement, only the portion of him for which he has not paid passes out of ownership. The contract becomes invalid with respect to that portion, but not with respect to what he has paid. This is

لأن العارية المطلقة التي ليست إلى أجل هي التي صحت بالنصوص وبالإجماع، وأما شرط التأجيل فيها فهو باطل، لأنه شرط ليس في كتاب الله تعالى، ولا جاء به نص ولا إجماع فهو باطل. وجمهور الفقهاء يقولون: إن العارية التي يشترط التأجيل فيها ليست شيئا، وهو شرط لا يلزم، فلم يتفق على صحته فهو باطل، وكذلك الوعد بالعارية لا يلزم لما ذكرنا. وهكذا القول في ضمان ما لم يلزم بعد من المال. وفي ضمان الوجه: أن كل ذلك باطل، لأنها شروط لم يأت بصحتها نص ولا إجماع، ويبطل بما ذكرنا ضمان النفقة على زيد، وعلى من لم يأت نص ولا إجماع بإيجاب النفقة عليه، وهكذا ضمان الصداق عمن لم يتزوج بعد، ووجب بما ذكرنا الرجوع في الشركة والقراض لأيهما شاء متى شاء، وإن كره الآخر، لأن شرط التأجيل فيها باطل، إذ لم يأت بإباحته نص ولا إجماع. وهكذا القول في كل شرط شرطه المحبس في الحبس من أجل محدود، أو من بيعه إن احتيج، كل ذلك باطل لما ذكرنا، وكذلك إن شرط في الهبة والعمرى والرقبى استرجاع شيء منها، فهو باطل كله لما ذكرنا، بخلاف وجوب ذكر الأجل في الإجارة، وبخلاف وجوب الرجوع في العارية. وأما ضمان ما قد وجب من الأموال فهو عقد مجمع على صحته، وقد جاء النص به، وكذلك الحوالة وإذ هما كذلك فلا رجوع لأحد فيها لما ذكرنا من أن ما صح في أول لم يبطل في ثان إلا بنص أو إجماع، وكذلك الحبس والهبات والصدقات والعمرى كل ذلك قد بان عن الملك، فالرجوع فيه كسب على غيره وقد جاء النص ببطلان ذلك قال الله تعالى {قل أغير الله أبغي ربا وهو رب كل شيء ولا تكسب كل نفس إلا عليها ولا تزر وازرة وزر أخرى ثم إلى ربكم مرجعكم فينبئكم بما كنتم فيه تختلفون} وأما القرض المؤجل فقد صح النص فيه بالأجل، وإذا صح بالنص فهو ثابت فلا رجوع لأحد فيه إذا كان شرط الأجل في حيز القرض لقوله تعالى {يأيها لذين آمنوا إذا تداينتم بدين إلى أجل مسمى فكتبوه وليكتب بينكم كاتب بلعدل ولا يأب كاتب أن يكتب كما علمه لله فليكتب وليملل

لذي عليه لحق وليتق الله ربه ولا يبخس منه شيئا فإن كان لذي عليه لحق سفيها أو ضعيفا أو لا يستطيع أن يمل هو فليملل وليه بلعدل وستشهدوا شهيدين من رجالكم فإن لم يكونا رجلين فرجل ومرأتان ممن ترضون من لشهدآء أن تضل إحداهما فتذكر إحداهما لأخرى ولا يأب لشهدآء إذا ما دعوا ولا تسأموا أن تكتبوه صغيرا أو كبيرا إلى أجله ذلكم أقسط عند لله وأقوم للشهادة وأدنى ألا ترتابوا إلا أن تكون تجارة حاضرة تديرونها بينكم فليس عليكم جناح ألا تكتبوها وأشهدوا إذا تبايعتم ولا يضآر كاتب ولا شهيد وإن تفعلوا فإنه فسوق بكم وتقوا لله ويعلمكم لله ولله بكل شيء عليم{ فإن انعقد حالا ثم شرط على نفسه أجلا فهو شرط فاسد لا يلزمه، والدين حال كما كان، لأنه شرط ليس في كتاب الله، ولا أجمع على لزومه فهو باطل. وأما المزارعة والمساقاة المعقودتان إلى أجل فقد ادعى قوم أن كل من أجازهما وهم أهل الحق قد أجازوهما إلى أجل مسمى، فالأجل فيهما شرط صحيح. وإذا كان صحيحا في حين العقد فهو لازم، وإذا كان لازما في وقته لم يبطل في ثانية إلا بنص أو إجماع، ولا نص ولا إجماع في ذلك إلا بتراضيهما معا، للإجماع على ذلك. قال أبو محمد: وهذا خطأ، بل قد صح الإجماع على عقدهما بغير أجل، ولم يأت عن أحد من الصحابة، ولا من التابعين تجويزهما إلى أجل فعقدهما إلى أجل لا يجوز البتة، لأنه لم يوجد نص ولا إجماع، فهو شرط ليس في كتاب الله تعالى فهو باطل بحكم النبي صلى الله عليه وسلم

Ali's position and what he transmits from the Prophet, may Allah bless him and grant him peace ﷺ. A revealed text has established the sale of a slave whose emancipation is stipulated to occur upon the owner's death, and the sale of a slave under a contractual self-purchase agreement insofar as he has not paid. This must therefore be permissible. Among those who held that either the lessor or the lessee may rescind the lease whenever he wishes before the term expires, even if the other objects, were Masruq, Shurayh, and al-Sha'bi. Among those who held that a testator may not revoke a bequest specifically concerning emancipation were al-Awza'i and al-Thawri. As for a loan for use, it differs from what we have mentioned, because an unrestricted loan for use, which has no fixed term, is what has been established as valid by the revealed texts and consensus. As for the stipulation of a fixed term in it, it is invalid, because it is a condition that is not in the Book of Allah Most High, and neither a revealed text nor consensus has established it; it is therefore invalid. The majority of jurists say that a loan for use in which a fixed term is stipulated amounts to nothing, and that this is a condition that is not binding. Its validity has therefore not been agreed upon, so it is invalid. Likewise, a promise of a loan for use is not binding, for the reasons we have mentioned. The same applies to guaranteeing a financial obligation that has not yet become due, and to guaranteeing a person's appearance: all of this is invalid, because these are conditions whose validity has been established by neither a revealed text nor consensus. What we have mentioned also invalidates guaranteeing maintenance incumbent upon Zayd, and upon anyone on whom neither a revealed text nor consensus has imposed an obligation of maintenance. The same applies to guaranteeing a marriage payment on behalf of someone who has not yet married. What we have mentioned also establishes that either party to a partnership or a profit-sharing investment arrangement may withdraw whenever he wishes, even if the other objects, because stipulating a fixed term in these arrangements is invalid, since neither a revealed text nor consensus has established its permissibility. The same applies to every condition stipulated by the founder of an endowment concerning the endowment, whether a limited term or its sale if need arises: all of that is invalid, for the reasons we have mentioned. Likewise, if he stipulates the recovery of anything given as a gift, a lifetime grant, or a grant

contingent upon which party survives the other, all of this is invalid, for the reasons we have mentioned. This differs from the obligation to specify a term in leasing and from the necessity of allowing revocation in a loan for use. As for guaranteeing financial obligations that have already become due, this is a contract whose validity is established by consensus, and a revealed text has established it. The same applies to the transfer of a debt. Since both are thus established, no one may withdraw from them, for the reason we have mentioned: what is valid at an initial moment does not become invalid at a subsequent moment except through a revealed text or consensus. Likewise, endowments, gifts, charitable donations, and lifetime grants have all passed out of ownership. Revoking them therefore constitutes earning against someone else, and a revealed text has established the invalidity of that. Allah Most High says: "Say: Shall I seek a lord other than Allah, when He is the Lord of everything? Every soul earns only against itself, and no burden-bearing soul bears the burden of another. Then to your Lord is your return, and He will inform you concerning that over which you used to differ." As for a loan with deferred repayment, a revealed text has established a term for it. Since it is established by a revealed text, it stands, and no one may withdraw from it when the stipulation of the term forms part of the loan, because He Most High says: "O you who believe, when you contract a debt with one another for a named term, write it down. Let a scribe write between you with justice. Let no scribe refuse to write as Allah has taught him; so let him write, and let the one who owes the obligation dictate. Let him fear Allah, his Lord, and diminish nothing of it. If the one who owes the obligation is deficient in judgment, weak, or unable to dictate himself, let his guardian dictate with justice. Call upon two witnesses from among your men to bear witness. If they are not two men, then a man and two women from among those whom you approve as witnesses, so that if one of the two women errs, one of them may remind the other. Let the witnesses not refuse when they are called. Do not weary of writing it down, whether small or large, up to its term. That is more equitable in Allah's sight, more conducive to establishing testimony, and more likely to keep you from doubt, unless it is an immediate transaction that you conduct among yourselves, in which case there is no blame upon you if you do not write it down. And take

witnesses when you transact a sale with one another. Let neither a scribe nor a witness be harmed. If you do so, it is disobedience on your part. Fear Allah; Allah teaches you, and Allah knows everything." If, however, it was contracted as immediately payable and he then stipulated a term for himself, this is an invalid condition that does not bind him, and the debt remains immediately payable as before, because it is a condition that is not in the Book of Allah, and there is no consensus that it is binding; it is therefore invalid. As for crop-sharing and orchard-tending arrangements contracted for a fixed term, Some people have claimed that everyone who permits these two contracts—and these are the people of truth—has permitted them until a specified term. Thus, a term in these contracts is a valid condition; and if it is valid at the time of contracting, it is binding. If it is binding at that time, it cannot become invalid a moment later except through a text or consensus. There is neither a text nor consensus concerning this except where both parties mutually consent, since there is consensus concerning that. Abu Muhammed said: This is an error. Rather, consensus has been established concerning the conclusion of these contracts without a term, while permission to conclude them for a term has not been transmitted from any of the Companions or the Successors. Concluding them for a term is therefore absolutely impermissible, because no text or consensus exists for it. It is thus a condition that is not in the Book of Allah, exalted is He, and is in-

valid by the ruling of the Prophet, may Allah bless him and grant him peace ﷺ.[82]8283485868788899091

L1963–1966 The mutual consent of two parties who have concluded a valid contract,

وليس تراضي المتعاقدين عقدا صحيحا أو المتشارطين شرطا صحيحا، بنص أو إجماع ثم تراضيا معا على فسخه أو تأجيله، مجيزا لهما ذلك، بل رضاهما بفسخه أو تأجيله، باطل، والعقد والشرط باق كما كان، إلا أن يبيح لهما النص أن يتراضيا على فسخه، فيكون لهما ذلك حينئذ، وإلا فلا، لأنه ليس لأحد أن يوجب، ولا أن يحرم، ولا أن يحلل إلا بنص، ومن تعدى ذلك فقد تعدى حدود الله تعالى، وشرع من الدين ما لم يأذن به الله، قال الله تعالى: {أم للإنسان ما تمنى} والكل عبيد لا أمر لهم ولا حكم إلا ما حكم به عليهم، ولهم خالقهم ومولاهم عز وجل. وأما النكاح والبيع فقد جاء النص بصفة عقدهما، وبصفة فسخهما، فليس لأحد أن يعقدها بغير تلك الصفة، فإن فعل فليس نكاحا ولا بيعا، وهو مردود مفسوخ أبدا. ومن عقدهما كما أمر فليس له فسخهما إلا بالصفة التي أتى النص بفسخهما بها، وإلا كان فسخه باطلا مردودا، وثبت عقدهما كما كان، وقد حرم بيع أم الولد بالنص الوارد في ذلك مما قد ذكرناه في كتاب الإيصال وفي المحلى، فلم يلتفت إلى الخلاف في ذلك. وقد صح النص بجواز الهبة ووجوب قبولها، وتحريم الرجوع فيها، فلم يجز الرجوع في شيء من الهبة ولا الصدقة من ذلك حاشا العطية للولد فقط، للنص في ذلك، ولم يأت نص ولا إجماع على رد الحبس لا بتراض ولا بغير تراض فلم يجز أصلا. قال أبو محمد: فإن قال قائل: أنتم لا تلزمون أحدا الوفاء بعهده ووعده إلا أن يوجب ذلك عليه نص، ومن مذهبكم أن وعد الله تعالى ووعيده نافذان لا سبيل إلى دخول خلف فيهما. فالجواب: أن هذا الذي نقول هو الذي لا يجوز تعديه، لأننا متعبدون ليس لنا أن نلتزم شيئا إلا ما ألزمنا خالقنا تعالى، فإلزامنا فعل شيء لم يأتنا نص ولا إجماع بأن نفعله باطل، والله تعالى ليس كذلك، لأنه ليس فوقه أمر فكل ما قضى به نافذ وكل ما قاله فحق.

[82]**Translator's note (L1951):** The source reads وورد, "and it was reported" or "and arrived," where the syntax and argument appear to require ورد, "and it is rejected." The translation follows the latter contextual sense. The attribution "Abu Muhammed" occurs twice consecutively in the source and is retained. The wording كل ما لا يصح بصفة ما وشرط ما وعقد ما literally speaks of something that "is not valid with a particular attribute, condition, and contract." The ensuing explanation instead concerns validity dependent upon them; "without" makes that apparent intended relationship explicit.

[83]**Translator's note (L1954):** The opening continues the preceding segment's statement that there is no possible third alternative. The final clause beginning "And if" is syntactically awkward in the supplied Arabic; its connection to the following objection has been retained without silently emending it.

[84]**Translator's note (L1955):** The final phrase continues into the next unit, whose opening word is "text."

[85]**Translator's note (L1956):** The supplied phrase describing Zayd's emancipation of a slave is grammatically rough; the intended relationship is conveyed without changing the stated ruling.

[86]**Translator's note (L1957):** "Their mutual consent" follows the supplied بتراضيها, whose pronoun is irregular in this context. The discussion of the slave under a contractual self-purchase agreement treats payment as corresponding to a portion of the slave; this potentially unfamiliar legal formulation has been preserved.

[87]**Translator's note (L1959):** The wording concerning maintenance "incumbent upon Zayd" is terse and leaves the precise scope of the example unclear; the two stated objects of the guarantee have been retained.

[88]**Translator's note (L1960):** "The necessity of allowing revocation" renders the unusually strong وجوب الرجوع, literally "the obligation of revocation," in the context of the author's argument for the availability of withdrawal. The Qur'anic quotations contain nonstandard spellings and omitted written alifs in the supplied transcription, but no clear resulting change in wording or meaning.

[89]**Translator's note (L1961):** The unvocalized wording ولا يضار كاتب ولا شهيد can also mean that neither a scribe nor a witness should cause harm; the passive reading is used here. The unit ends with فقد, which introduces the assertion continuing in the following segment; the English remains open at the same point.

[90]**Translator's note (L1962):** The two contracts are sharecropping and orchard-tending agreements, identified in the preceding context.

[91]**Qur'an references (L1950):** Qur'an 6:164 (Al-An'am); Qur'an 2:282 (Al-Baqarah).

or stipulated a valid condition, on the authority of a text or consensus, followed by their mutual consent to rescind it or defer it, does not make that permissible for them. Rather, their consent to its rescission or deferment is invalid, and the contract and condition remain as they were, unless a text permits them to consent mutually to its rescission. In that case they may do so; otherwise they may not. For no one may impose an obligation, prohibit something, or make something lawful except through a text. Whoever goes beyond that has transgressed the bounds of Allah, exalted is He, and prescribed as religion something for which Allah has given no permission. Allah, exalted is He, said: "Or shall man have whatever he wishes?" All are servants: they possess no authority to command or adjudicate except what their Creator and Master, mighty and majestic is He, has decreed against them and in their favor. As for marriage and sale, the text has specified the manner of concluding them and the manner of rescinding them. No one may conclude them in any other manner. If he does, it is neither marriage nor sale, and it is rejected and rescinded in every case. Whoever concludes them as commanded may rescind them only in the manner in which the text has provided for their rescission. Otherwise, his rescission is invalid and rejected, and their contracts remain established as before. The sale of a slave woman who has borne her master a child has been prohibited by the text transmitted concerning this, which we have mentioned in The Book of Conveyance and in al-Muhalla; disagreement concerning it is therefore disregarded. The text establishing the permissibility of gifts, the obligation to accept them, and the prohibition of taking them back has been authenticated. It is therefore impermissible to take back any gift or charitable donation of this kind, with the sole exception of a gift to one's child, because of the text concerning that. And no text or consensus has established the revocation of an endowment, whether by mutual consent or without mutual consent, so it is wholly impermissible. Abu Muhammed said: If someone says, "You do not require anyone to fulfill his covenant or promise unless a text makes that obligatory for him, yet your position is that Allah's promise and threat, exalted is He, will both be fulfilled, and that there is no possibility of either going unfulfilled," the answer is that what we say is precisely what one may not go beyond. For we are subject to divine commands, and we may

وأيضا فوعدنا نحن ليس خبرا لأنه لا علم لنا بما يكون في المستأنف، والله تعالى ليس كذلك، لأنه عليم بما يكون قبل أن يكون، فكل ما أخبر تعالى أنه يفعله فلا بد أن يفعله، ومن أجاز غير ذلك أجاز على الله تعالى الكذب في خبره تعالى الله عن ذلك قال الله عز وجل {قال فلحق ولحق أقول} ما خالف الحق فهو باطل تعالى الله عن الباطل، فوعد الله تعالى ووعيده خبر لا بد من كونه لأنه حق وصدق وعلم منه تعالى بما يكون من ذلك، وعلمه صادق لا يخيس أصلا. ولا يظن ظان أننا نقول بالوعيد كقول المعتزلة: من إبطال سيئة واحدة للحسنات، ومن الخلود على المصر على الكبائر، ومعاذ الله من ذلك. ولكنا نقول بما جاء به النص من الموازنة، وذهاب السيئات بالحسنات، بمعنى أن الحسنات تذهب السيئات، وبأن من استوت حسناته وسيئاته، أو رجحت حسناته لم ير نار أصلا، ولكن من رجحت سيئاته وكبائره ممن مات مصرا فهؤلاء الذين يخرجون من النار بالشفاعة، ولا خلود على مسلم في النار، ولا يدخل الجنة كافر أبدا، وبالله تعالى التوفيق وهو حسبنا ونعم الوكيل

undertake as an obligation only what our Creator, exalted is He, has made obligatory for us. Thus, requiring us to do something when no text or consensus has reached us requiring us to do it is invalid. Allah, exalted is He, is not like this, because there is no command above Him. Everything He decrees therefore takes effect, and everything He says is true. Moreover, our own promise is not a statement of fact, because we have no knowledge of what will happen in the future. Allah, exalted is He, is not like this, because He knows what will happen before it happens. Thus, everything that He, exalted is He, has stated He will do, He must do. Whoever allows anything else allows that Allah, exalted is He, may lie in His statements. Exalted is Allah above that! Allah, mighty and majestic is He, said: "He said: 'Then the truth—and the truth I speak.'" Whatever conflicts with the truth is falsehood. Exalted is Allah above falsehood! Thus, Allah's promise and threat, exalted is He, are statements of fact whose fulfillment is inevitable, because they are truth, veracity, and knowledge on His part, exalted is He, of what will happen in these matters. His knowledge is true and never fails at all. Let no one suppose that our position concerning the threat is like that of the Muʿtazilites, who hold that a single evil deed nullifies good deeds and that one who persists in major sins will remain eternally in the Fire. Allah forbid that we should hold this! Rather, we affirm what the text has brought concerning the weighing of deeds and the removal of evil deeds through good deeds, meaning that good deeds remove evil deeds, and that anyone whose good and evil deeds are equal, or whose good deeds outweigh his evil deeds, will never see any fire at all. But those whose evil deeds and major sins outweigh their good deeds, among those who die persisting in sin, are the ones who will be brought out of the Fire through intercession. No Muslim will remain eternally in the Fire, and no unbeliever will ever enter Paradise. Through Allah, exalted is He, comes success. He is sufficient for us, and an excellent Trustee is He.[92][93]

[92] **Translator's note (L1966):** The Qur'anic quotation has defective spelling in فلحق ولحق, apparently representing فالحق والحق. The translation preserves the quotation's fragmentary syntax without supplying an oath or a predicate.

[93] **Qur'an references (L1963):** Qur'an 53:24 (An-Najm).

الباب 24: الحكم بأقل ما قيل

Chapter 24: Ruling According to the Least Amount Proposed

Ibn Ḥazm · Arabic–English parallel edition

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[الباب الرابع والعشرون وهو باب الحكم بأقل ما قيل]

قال أبو محمد رحمه الله ادعى قوم أن هذا أيضا نوع من أنواع الإجماع صحيح لا شك فيه. وقالوا: لأنه قد صح إلزام الله عز وجل لنا اتباع الإجماع والنص، وحرم علينا القول بلا برهان، فإذا اختلف الناس في شيء فأوجب قوم فيه مقدارا ما وذلك نحو النفقات والأروش والديات، وبعض الزكوات وما أشبه ذلك، وأوجب آخرون أكثر من ذلك واختلفوا فيما زاد على ذلك، فالإجماع فرض علينا أن نأخذ به. وأما الزيادة فدعوى من موجبها، إن أقام على وجوبها برهانا من النص أخذنا به والتزمناها، وإن لم يأت عليها بنص فقوله مطرح وهو مبطل عند الله عز وجل بيقين لا شك فيه، ونحن محقون في الأخذ بأقل ما قيل عند الله عز وجل بيقين، لأنه أمر مجتمع عليه والاتفاق من عند الله عز وجل، ولزوم ما اجتمع عليه فرض لا شك فيه، والاختلاف ليس من عند الله عز وجل قال الله تعالى {أفلا يتدبرون لقرآن ولو كان من عند غير لله لوجدوا فيه ختلافا كثيرا} قال أبو محمد كان يكون هذا حقا صحيحا لو أمكن ضبط أقوال جميع أهل الإسلام في كل عصر، وإذ لا سبيل إلى هذا فتكلفه عناء لا معنى له، ولا بد من ورود النص في كل حكم من أحكام الشريعة، لكن إذا ورد نص بإيجاب عمل ما فبأقل ما يقع عليه اسم فاعل لما أمر به، يسقط عنه الفرض، كمن أمر بصدقة، فبأي شيء تصدق، فقد أدى ما أمر به، ولا يلزمه زيادة، لأنها دعوى بلا نص ولا غاية لذلك فهو باطل. ولا سبيل إلى أن يكون الله تعالى حكم في الشريعة يلزمنا لم يجعل عليه دليلا من نص وقال الله تعالى {وما من دآبة في لأرض ولا طائر يطير بجناحيه إلا أمم أمثالكم ما فرطنا في لكتاب من شيء ثم إلى ربهم يحشرون} فما لم يكن في الكتاب فليس من الدين في شيء، وهو ساقط عنا بيقين، ومنهم من قال: بل نأخذ بأكثر ما قيل، لأنه لا يخرج من لزمه فرض عما

[Chapter Twenty-Four: The Chapter on Ruling According to the Least Amount Proposed]

Abu Muhammed, may Allah have mercy on him, said: Some people have claimed that this too is a valid kind of consensus, concerning which there is no doubt. They said: "For it has been established that Allah, mighty and majestic is He, has obliged us to follow consensus and the text, and has forbidden us to speak without demonstration. Thus, when people disagree concerning something, with some imposing a certain amount—as in maintenance payments, compensation for injuries, blood money, certain obligatory alms, and similar matters—and others imposing more than that, disagreeing over what exceeds that amount, we are obliged to adopt the consensus. As for the additional amount, it is a claim made by whoever imposes it. If he establishes a demonstration from the text that it is obligatory, we adopt it and accept it as binding. If he produces no text for it, his position is discarded, and he is certainly in the wrong before Allah, mighty and majestic is He, without any doubt. We are certainly in the right before Allah, mighty and majestic is He, in adopting the least amount proposed, because it is a matter upon which there is consensus. Agreement comes from Allah, mighty and majestic is He, and adherence to what is agreed upon is an obligation beyond doubt. Disagreement does not come from Allah, mighty and majestic is He." Allah, exalted is He, said: "Do they not reflect upon the Qur'an? Had it been from other than Allah, they would have found much disagreement in it." Abu Muhammed said: This would indeed be true and sound if it were possible to ascertain the positions of all the people of Islam in every age. Since there is no way to do this, attempting it is pointless toil. A text must have been transmitted concerning every ruling of the revealed law. However, when a text imposes some action as obligatory, the obligation is discharged by the least performance sufficient for a person to be called someone who has done what he was commanded to do. For example, if someone is commanded to give charity, then whatever he gives in charity fulfills what he was commanded to do. No additional amount is binding upon him, because that is a claim without a text, and there is no limit to it; it is therefore invalid. It is impossible that Allah, exalted is He, should have decreed a ruling in the revealed law

that binds us without providing evidence for it from a text. Allah, exalted is He, said: "There is no creature upon the earth, nor any bird flying with its two wings, but they are communities like you. We have neglected nothing in the Book. Then to their Lord they will be gathered." Thus, whatever is not in the Book is no part of religion whatsoever, and we are certainly exempt from it. Some of them said: Rather, we adopt the greatest amount stated, because someone upon whom an obligation is incumbent cannot be released from what is incumbent upon him except with certainty, and there is no certainty until he has encompassed everything that has been stated. Abu Muhammed said: This is false, because by this assertion he has become someone who pursues that of which he has no knowledge and establishes a ruling without demonstration. This is forbidden by the explicit text of the Quran and the consensus of the community. Everyone who disagrees with us concerning this principle necessarily contradicts himself and returns to affirming it. Do you not see that we have all agreed upon the obligation of five prayers, while some people have claimed that the odd-numbered prayer is obligatory? It is therefore obligatory to submit to what they have agreed upon and to leave aside what they have disputed, unless they produce evidence for what they have added. Likewise, we have agreed that one cow is due on fifty head of cattle. Some people said that one sheep is due on every five cows; some said that a year-old calf is due on thirty, and on forty; and some said that, on whatever exceeds forty, a proportionate fraction of a cow is due. It is therefore obligatory to adopt what they have agreed upon and leave aside what they have disputed, if they produce no evidence for their claims concerning that. It is obligatory that [no] one be held liable for anything except the one cow on fifty, which is what they and others agree upon, rather than any additional financial liability imposed in this matter. Then we say to whoever disagrees with us concerning this principle: Tell us, if people agree upon a certain amount, and some then assert a greater amount without producing evidence for the correctness of their assertion, can you avoid one of three alternatives, with no fourth? Either you affirm what they have unanimously agreed upon and leave aside what they have disputed—which is this very position of ours with which you disagree—or you adopt the greatest amount stated without evidence, thereby pursuing that of which you have no knowl-

لزمه إلا بيقين، ولا يقين إلا بعد أن يستوعب كل ما قيل. قال أبو محمد: وهذا باطل، لأنه صار بهذا القول قافيا ما ليس له به علم، ومثبتا حكما بلا برهان، وهذا حرام بنص القرآن وإجماع الأمة، وكل من خالفنا في هذا الأصل فإنه يتناقض ضرورة ويرجع إلى القول به. ألا ترى أننا اتفقنا كلنا على إيجاب خمس صلوات وادعى قوم أن الوتر فرض فوجب الانقياد لما اجتمعوا عليه، وترك ما اختلفوا فيه، إلا أن يأتوا بدليل على ما زادوا. وكذلك اتفقنا على أن في خمسين من البقر بقرة، وقال قوم: في كل خمس بقرات شاة، وقال قوم: في الثلاثين تبيع وفي الأربعين، وقال قوم: فيما زاد على الأربعين بحساب ذلك بجزء من بقرة، فوجب الأخذ بما اتفقوا عليه، وترك ما اختلفوا فيه، إذا لم يأتوا بدليل على ما ادعوا من ذلك. ووجب أن يلزم أحدا إلا البقرة في خمسين، وهي المتفق عليه منهم ومن غيرهم، لا ما زاد في إيجاب الغرامة في ذلك. ثم نقول لمن خالفنا في هذا الأصل: أرأيت إن اجتمع الناس على مقدار ما؟ ثم قال قوم بأزيد منه، ولم يأتوا على صحة قولهم بدليل: هل لك بد من ثلاثة أوجه لا رابع لها، إما أن تقول بما أجمعوا عليه، وبترك ما اختلفوا فيه، وهو قولنا هذا الذي خالفتنا فيه، أو تأخذ بأكثر ما قيل بلا دليل فتصير قافيا ما ليس لك به علم ومثبتا حكما بلا برهان، فهذا حرام بنص القرآن، وبإجماع الأمة، لم يقل به أحد، ويصير قائله منتهكا إما عرضا حراما، وإما مالا حراما، وإما موجبا شرعا لم يأذن به الله تعالى، وكل ذلك حرام لا يحل أصلا. وإما أن يترك هذين القولين فيفارق الإجماع جملة، ويأتي أيضا بقول لم يقله أحد فإذ قد سقط هذان القولان بالضرورة البرهانية، صح القول الأول ضرورة بيقين لا بد منه، وبالله تعالى التوفيق. فإن قال قائل: لا يجوز أن يخلو أحد القولين من دليل عليه، إما أن يقوم الدليل على صحة القول بالمقدار الأقل، وإما أن يقوم الدليل على صحة الزيادة عليه.

edge and establishing a ruling without demonstration. This is forbidden by the explicit text of the Quran and by the consensus of the community; no one has affirmed it. Whoever affirms it thereby becomes someone who either violates inviolable honor, unlawfully takes protected property, or imposes a religious ordinance for which Allah Most High has given no permission. All of that is forbidden and absolutely impermissible. Or he abandons these two positions, thereby departing entirely from consensus and also introducing a position that has been asserted by no one. Since these two positions have thus necessarily fallen by demonstrative necessity, the first position is necessarily correct, with inescapable certainty. Through Allah Most High comes success. If someone says: Neither of the two positions can lack evidence supporting it: either evidence establishes the correctness of affirming the lesser amount, or evidence establishes the correctness of the addition to it.[1][2][3][4]

L1973–1975 Abu Muhammed said: We need not engage in a lengthy discussion with him here. Rather, we say—and through Allah Most High comes success—we do not dispute with you concerning that for which evidence has been established. We are asking you only about a question in which some people affirm a certain amount, while others affirm an addition for which they possess no evidence, on condition that the question belongs to those questions resting on consensus alone in which the text has referred us to obey those vested with authority among us, to follow the path of the believers. If you say that the absence of evidence establishing the correctness of an addition to the least amount stated is evidence establishing the correctness of affirming the least amount stated, then this is precisely our position, whether you wish

[1] **Translator's note (L1968):** The Qur'anic quotation contains defective spellings in لقرآن, لله, and ختلافا, apparently representing القرآن, الله, and اختلافا. Its sense has been translated without treating these spelling defects as changes in wording.

[2] **Translator's note (L1969):** The Qur'anic quotation contains defective spellings in لأرض and لكتاب, apparently representing الأرض and الكتاب.

[3] **Translator's note (L1970):** The cattle assessment clause ends 'and on forty' without stating what is due on forty. The omission is retained. The wording 'it is obligatory that [no] one be held liable' supplies a bracketed negative absent from the Arabic. Without it, the clause is grammatically and logically defective in this context.

[4] **Qur'an references (L1968):** Qur'an 4:82 (An-Nisa); Qur'an 6:38 (Al-An'am).

قال أبو محمد: لسنا نحتاج إلى التطويل معه ههنا، لكنا نقول، وبالله تعالى التوفيق، لسنا ننازعك فيما قام الدليل عليه، وإنما نسألك عن مسألة قال فيها قوم بمقدار ما، وقال آخرون بزيادة لا دليل عليها بأيديهم شرط أن تكون المسألة من مسائل الإجماع المجرد التي قد أحال النص فيها على طاعة أولي الأمر منا على اتباع سبيل المؤمنين. فإن قلت: إن عدم الدليل على صحة الزيادة على أقل ما قيل هو دليل على صحة القول بأقل ما قيل، فهذا هو نفس قولنا شئت أم أبيت، وبالله تعالى التوفيق. وقد احتج بعض من ضغط هذا الباب، ممن اضطر إلى الشغب بمثل ما نذكره وشبهه إلى أن قال: ما الفرق بينكم وبين من قال: هذه قصة قد لزم فيها حكم بإجماع، فلا يخرج المرء عما لزم بإجماع إلى سقوطه عنه إلا بإجماع آخر، فالواجب أن يقال بأكثر ما قيل. فيقال له: هذا تمويه فاسد، لأنهما أمران أردت مزجهما وتصييرهما أمرا واحدا. ولا يصح ذلك، لأن كون وجوب الحكم في مسألة ما هو شيء آخر غير وجوب مقدار ما في ذلك الحكم. فليس اتفاق الأمة على أن ههنا حكما واجبا مما يوجب في ذلك مقدارا محدودا، بل هذا هو باب آخر، فإذا وجب الحكم نظرنا حينئذ في قدر الحكم فيه بنص وارد، فإن لم يرد نص صرنا فيه إلى الإجماع، فالعدد المتفق عليه واجب قبوله بإجماع، ومن ادعى

it or refuse it. Through Allah Most High comes success. Some whom this argument has pressed, and who have been driven to contentious quibbling, have argued with statements such as those we shall mention and the like, eventually saying: What is the difference between you and someone who says: This is a case in which a ruling has become binding by consensus, so a person cannot pass from what has become binding by consensus to being exempt from it except through another consensus; consequently, the greatest amount stated must be affirmed? He is to be told: This is invalid obfuscation, because these are two matters that you have sought to blend and make into one, and that is unsound. The fact that a ruling is obligatory in a particular question is something different from the obligation of a particular amount under that ruling. The community's agreement that an obligatory ruling exists here does not establish a specified amount in that matter. Rather, this is a separate question. Once the ruling becomes obligatory, we then examine the extent of the ruling in the matter on the basis of a transmitted text. If no text has been transmitted, we turn to consensus concerning it. The agreed number must be accepted by consensus, and whoever claims an addition is required to furnish evidence. If he produces it, following it becomes binding; otherwise, his assertion falls by the words of Allah Most High: 'And they said: None shall enter Paradise unless they are Jews or Christians. Those are their wishes. Say: Produce your demonstration, if you are truthful.' Of this same kind is our knowledge that a religion and religious ordinances are incumbent upon us, except that whoever claims that something is obligatory, introducing it into religious law, is not to be heeded, nor must his assertion be accepted, except on the basis of a text or consensus. Likewise, our knowledge that some ruling is obligatory for us does not require us to accept the assertion of everyone who defines that ruling for us by some particular limit, unless he produces a text or consensus supporting his limit. All of this belongs to one and the same question. The foundational principle is that no ruling is incumbent upon anyone and nothing is forbidden to anyone, by His words, Most High: 'He is the One who created for you whatever is in the earth, all of it; then He turned to heaven and fashioned them into seven heavens, and He has knowledge of all things'; and by His words, Most High: 'O you who believe, do not ask about things which, if disclosed to you, would

زيادة كلف الدليل، فإن أتى به لزم اتباعه، وإلا سقط قوله بقول الله تعالى {وقالوا لن يدخل لجنة إلا من كان هودا أو نصارى تلك أمانيهم قل هاتوا برهانكم إن كنتم صادقين} ومن هذا النوع هو علمنا أن علينا دينا وشرائع، إلا أنه من ادعى وجوب شيء ما يدخله في الشرع، لم يلتفت إليه، ولم يجب قبوله إلا بنص أو إجماع، وهكذا علمنا بوجوب حكم ما علينا ليس يوجب قبولنا من كل من حد لنا ذلك الحكم بحد ما، إلا أن يأتي على حده بنص أو إجماع. وهذا كله باب واحد، والأصل أن لا حكم على أحد ولا شيئا حراما على أحد بقوله تعالى {هو لذي خلق لكم ما في لأرض جميعا ثم ستوى إلى لسمآء فسواهن سبع سماوات وهو بكل شيء عليم} وبقوله تعالى {يأيها لذين آمنوا لا تسألوا عن أشيآء إن تبد لكم تسؤكم وإن تسألوا عنها حين ينزل لقرآن تبد لكم عفا لله عنها ولله غفور حليم * قد سألها قوم من قبلكم ثم أصبحوا بها كافرين}

distress you. If you ask about them while the Quran is being sent down, they will be disclosed to you. Allah has pardoned them, and Allah is forgiving, forbearing. A people before you asked about them, then became disbelievers in them.'[5]

L1976 And by his words ﷺ: 'Your blood, your property, your honor, and your skin are inviolable among you, like the inviolability of this day of yours.' Thus nothing of anyone's property, blood, honor, or skin is lawful for anyone except what a text or consensus has permitted. Anything beyond that is invalid by the texts we have mentioned. The least amount stated in everything we have mentioned is therefore obligatory by consensus upon its obligation, and every addition to that is invalid unless its claimant brings us a text establishing the correctness of his assertion. The text mentioned also establishes that, if people agree, or a text comes, imposing an amount from us affecting a Muslim's honor, skin, or property, then its obligation stands. If a claimant then claims that an addition in that matter is obligatory, without producing a text establishing the correctness of his claim, it is certainly invalid, because there is no one who may make lawful what Allah Most High has forbidden. The same applies to whoever forbids anything on earth, apart from that whose prohibition is established by a text or consensus. Likewise, it applies to whoever imposes something additional to what a text or consensus has established as obligatory. This suffices as an explanation. We must require whoever holds a contrary position, if he is a Maliki or a Shafi'i, to impose the obligatory alms-tax on honey, because the community unanimously agrees that an alms-tax is due on property, by His words, Most High: 'Take from their property an alms-offering by which you cleanse them and purify them, and pray for them; your prayers are a source of tranquility for them, and

[5]**Qur'an references (L1973):** Qur'an 2:111 (Al-Baqarah); Qur'an 2:29 (Al-Baqarah); Qur'an 5:101 (Al-Ma'idah); Qur'an 5:102 (Al-Ma'idah).

وبقوله صلى الله عليه وسلم إن دماءكم وأموالكم وأعراضكم وأبشاركم عليكم حرام كحرمة يومكم هذا فلا يحل لأحد من مال أحد ولا من دمه ولا من عرضه ولا من بشرته إلا ما أباحه نص أو إجماع، وما عدا ذلك فباطل بالنصوص التي ذكرنا، فأقل ما قيل في كل ما ذكرنا: هو واجب بالإجماع على وجوبه، وكل زيادة على ذلك فباطل، إلا أن يأتينا مدعيها بنص يصحح قوله. وصح بالنص المذكور أنه إن اتفق الناس أو جاء نص بإيجاب مقدار منا من عرض مسلم أو بشرته أو ماله فهو وجوبه، ثم إن ادعى مدع وجوب زيادة في ذلك ولم يأت على صحة دعواه بنص فهو باطل بيقين، لأنه لا محل ما قد حرم الله تعالى، وكذلك القول فيمن حرم شيئا مما في الأرض حاشا ما جاء في تحريمه نص أو إجماع. وكذلك من فرض شيئا زائدا على ما أوجب أنه فرض نص أو إجماع وكفى بهذا بيانا. ويلزمنا من قال بخلاف هذا إن كان مالكيا، أو شافعيا أن يوجب الزكاة في العسل، لأن الأمة مجمعة على أن في الأموال زكاة بقوله تعالى: {خذ من أموالهم صدقة تطهرهم وتزكيهم بها وصل عليهم إن صلواتك سكن لهم والله سميع عليم} فيلزمهم ألا يسقط هذا الحق اللازم بإجماع إلا بإجماع آخر،

Allah is hearing, knowing.' They must therefore refrain from setting aside this due, binding by consensus, except through another consensus.[6][7]

L1977–1978 And if he is a Hanafi, he must impose the obligatory alms-tax on jewelry and working animals, on the grounds we have mentioned. There are very many examples like this, overturning most of their doctrines and invalidating the greater part of their assertions concerning prayer, ritual purification, pilgrimage, and all the other divisions of jurisprudence. Through Allah Most High comes success. If someone says: When you say, 'If this assertion of an additional obligation were binding, evidence for it would have come,' what do you say to someone who tells you, 'If it were inapplicable, evidence setting it aside would have come'? What is required is to say: This is a correct assertion, and we have expressly identified the evidence transmitted for setting aside every assertion of prohibition, permission, or the imposition of a ruling whose correctness is established by neither a text nor consensus. That evidence consists of the verses we recited just now. They therefore establish that every amount whose obligation or collection is agreed upon is obligatory, and that whoever adds anything to that by his own claim is, by those texts, a fabricator asserting falsehood, unless he produces a text establishing the correctness of his claim. This is a clear matter with no obscurity, and only someone bereft of divine aid or obstinately resistant fails to grasp it. This applies only to matters concerning which no text has been transmitted. As for matters concerning which a text has come, we give no consideration to how much of them has been agreed upon, nor do we then concern ourselves with whoever disagrees with us. Nor do we give

ولزمه إن كان حنفيا أن يوجب الزكاة في الحلي والعوامل بما ذكرنا، ومثل هذا كثير جدا، مسقط أكثر مذاهبهم، ومفسد لجمهور أقوالهم في الصلاة والطهارة والحج وسائر أبواب الفقه كلها، وبالله تعالى التوفيق. فإن قال قائل: إذا قلتم لو كان هذا القول الزائد واجبا لجاء به دليل، فماذا تقولون لمن قال لكم لو كان ساقطا لجاء بإسقاطه دليل، فالواجب: أن هذا قول صحيح وقد نصصنا على الدلائل الواردة بإسقاط كل قول بتحريم، أو بتحليل أو إيجاب حكم لم يأت بصحته نص أو إجماع، وهي الآيات التي تلوناها آنفا فوجب بها أن كل مقدار اتفق على وجوبه أو أخذه فهو واجب، ومن زاد على ذلك بدعواه شيئا فهو مفتر مبطل بتلك النصوص ما لم يأت على صحة دعواه بنص، وهذا أمر جلي لا إشكال فيه، ولا يذهب عنه إلا مخذول أو معاند، وإنما هذا فيما لم يرد فيه نص، وأما ما جاء فيه نص فلا نراعي فيه ما اتفق عليه منه، ولا نبالي بمن خالفنا حينئذ، ولا نراعي فيه استصحاب حال ولا أقل ما قيل فيه.

[6] **Translator's note (L1976):** The phrase translated 'an amount from us affecting' reads مقدار منا من and is awkward and possibly corrupt. Its wording has been retained rather than silently emended. The wording فهو وجوبه, rendered 'then its obligation stands,' is syntactically awkward. The Arabic ويلزمنا من قال literally suggests 'whoever says … binds us,' whereas the ensuing argument requires imposing a consequence upon the opponent. The translation follows that contextual construction; the transmitted wording appears defective.

[7] **Qur'an references (L1976):** Qur'an 9:103 (At-Tawbah).

consideration in them to the presumption of continuity of an existing state or to the least amount stated concerning them,[8]

L1979–1986 Rather, we follow the text, whether it adds to what has been agreed upon, falls short of it, or accords with it, because the evidence has then been established and the demonstration has proved sound that one must turn to what the text provides. Taking more than the minimum is thereby established as sound. Even if only one trustworthy person independently transmitted the additional amount, and all the inhabitants of the earth opposed him, adopting what that one person transmitted would be obligatory, because he is right. It would be incumbent upon us to oppose everyone who opposed that one person's transmission, even if they were all the inhabitants of the earth without exception, because they would all then be upholding falsehood. They would be obliged to accept that one person's transmission: the truth is more with him than with everyone who opposes him, and he has the greater claim to be followed. Allah Most High said: {O you who believe, attend to yourselves. Whoever goes astray will not harm you when you have been guided. To Allah is the return of you all, and He will inform you of what you used to do.} Thus He Most High made this general, without making any exception specific. And He Most High said: {Fight, then, in the way of Allah. You are charged with none but yourself. And urge on the believers. Perhaps Allah will restrain the might of those who disbelieve. Allah is greater in might and more severe in punishment.} If someone says, "What, then, do you say about two witnesses, one of whom testifies that Zayd is owed by ʿAmr one dinar, while the other testifies that he is owed two dinars by him? Do you adopt the minimum upon which we have agreed?" Abū Muḥammed said: Demonstration from the text has established that one dinar must be awarded to him on the testimony of the two of them. By a second, further text, the remaining dinar is awarded to him if the claimant swears to what his witness [attested]. This therefore belongs to the category in which evidence has established that judgment must be given for the additional amount. Some of those who disagree with us

[8]**Translator's note (L1977):** The Arabic فالواجب, literally 'what is required,' is unusual where an introduction to the answer is expected. The translation retains that sense rather than silently replacing it with 'the answer.'

ولكن نأخذ بالنص زائدا كان على ما اتفق عليه، أو ناقصا عنه، أو موافقا له، لأن الدليل قد قام حينئذ والبرهان صح على وجوب الانتقال إلى ما جاء به النص، وصح بذلك الأخذ بالزائد على أقل ولو لم ينفرد بالرواية للزائد إلا إنسان واحد ثقة، وخالفه جميع أهل الأرض، لكان القول بما رواه ذلك الواحد واجبا، لأنه محق ولكان فرضا علينا خلاف كل من خالف رواية ذلك الواحد، ولو أنهم جميع أهل الأرض سواء، لأنهم كلهم حينئذ مبطلون يلزمهم قبول رواية ذلك الواحد، الحق أكثر من كل من خالفه وأولى أن يتبع قال الله تعالى {يأيها لذين آمنوا عليكم أنفسكم لا يضركم من ضل إذا هتديتم إلى لله مرجعكم جميعا فينبئكم بما كنتم تعملون} فعم تعالى ولم يخص وقال تعالى {فقاتل في سبيل لله لا تكلف إلا نفسك وحرض لمؤمنين عسى لله أن يكف بأس لذين كفروا ولله أشد بأسا وأشد تنكيلا} فإن قال قائل فما تقولون في شاهدين شهد أحدهما لزيد على عمرو بدينار، وشهد له الآخر عليه بدينارين. أتقولون بأقل ما اتفقنا عليه؟. قال أبو محمد: هذا قد قام البرهان من النص على وجوب القضاء له بالدينار بشهادتهما، ومن نص آخر ثان يقضي له بالدينار الباقي إن حلف المدعى له ما شاهده، فهذا من باب ما قام الدليل على وجوب الحكم بالزيادة فيه، وقد قال بعض من خالفنا: إن القائل بما أخذتم به، من أقل ما قيل لم يقل به، لأنه أقل ما قيل، وإنما قال به لدليل ما أوجبه عنده، فقولوا بدليله حتى نناظركم عليه. قال أبو محمد: فيقال من قال بهذا، وبالله تعالى التوفيق: إنا لا نتعنى باستدلال المستدلين، لأنه قد يستدل المرء بدليل غير واجب، فيخرجه البحث إلى قول صحيح كما عرض لابن مسعود، إذ سئل عن امرأة توفي عنها زوجها قبل أن يدخل بها، وقبل أن يفرض لها صداقا، فقال: بعد شهر أقول فيها برأيي، فإن كان صوابا فمن الله تعالى، وإن كان خطأ فالله ورسوله بريئان ثم أفتى بما وافق الحق من فعل رسول الله صلى الله عليه

have said: "The person who advocates the minimum stated amount that you have adopted did not advocate it because it was the minimum stated amount. He advocated it only because of some evidence that, in his judgment, made it obligatory. So adopt his evidence, so that we can debate it with you." Abū Muḥammed said: To anyone who says this, the following reply is made—and success comes through Allah Most High: We do not trouble ourselves with the reasoning of those who reason, because a person may reason from evidence that has no binding force, yet his investigation may lead him to a correct position. This happened to Ibn Masʿūd when he was asked about a woman whose husband died before consummating the marriage with her and before assigning her a bridal payment. After a month he said: "I shall speak about her on the basis of my own opinion. If it is correct, it is from Allah Most High; and if it is mistaken, Allah and His Messenger are free of responsibility for it." He then issued a legal opinion that accorded with the truth established by the action of the Messenger of Allah ﷺ, without having known of it. Thus we pay no heed to Ibn Masʿūd's reasoning; indeed, we do not adopt it at all. We do, however, adopt the conclusion to which he was brought by good fortune, because it accorded with the judgment of the Messenger of Allah ﷺ. When we find that someone has declared a certain amount obligatory, and all the scholars, from first to last, have agreed with him that it is obligatory, Allah Most High has made it obligatory for us to follow consensus and not to oppose the way of the believers and those vested with authority among us. We pay no heed to his reasoning in this, since Allah Most High has not commanded us to follow the reasoning of an individual scholar or a group of scholars. He Most High has commanded us only to follow what they have agreed upon and to leave what they dispute until we refer it back and make the Quran and the Sunnah the arbiters concerning it. We have done this, adopting what they have unanimously agreed upon, which is the minimum stated amount, because He Most High says: {O you who believe, obey Allah and obey the Messenger and those vested with authority among you. If you dispute concerning anything, refer it back to Allah and the Messenger, if you believe in Allah and the Last Day. That is better and fairest in outcome.} It is therefore not lawful for a Muslim to oppose this. We have required anyone who adds to that amount an increment concerning

وسلم دون أن يكون علمه فنحن لا نبالي باستدلال ابن مسعود بل لا نقول به أصلا، لكنا نقول بما أخرجه إليه السعد لأنه وافق قضاء رسول الله صلى الله عليه وسلم فإذا وجدنا القائل قد أوجب مقدارا ما ووافقه على إيجابه جميع العلماء أولهم عن آخرهم، فقد أوجب الله تعالى علينا اتباع الإجماع وألا نخالف سبيل المؤمنين وأولي الأمر منا. ولا نبالي باستدلاله في ذلك، إذ لم يأمر الله تعالى باتباع استدلال الواحد أو الطائفة من العلماء، وإنما أمرنا تعالى باتباع ما اتفقوا عليه، وترك ما تنازعوا فيه حتى نرده فنحكم فيه القرآن والسنة، فقد فعلنا ذلك، فأخذنا بما أجمعوا عليه وهو أقل ما قيل لقوله تعالى {يا أيها لذين آمنوا أطيعوا لله وأطيعوا لرسول وأولي لأمر منكم فإن تنازعتم في شيء فردوه إلى لله ولرسول إن كنتم تؤمنون بلله وليوم لآخر ذلك خير وأحسن تأويلا} فلا يحل لمسلم خلاف هذا، وكلفنا من زاد على ذلك المقدار زيادة يتورع فيها أن يأتي ببرهان من النص إن كان صادقا بقوله تعالى {يا أيها لذين آمنوا أطيعوا لله وأطيعوا لرسول وأولي لأمر منكم فإن تنازعتم في شيء فردوه إلى لله ولرسول إن كنتم تؤمنون بلله وليوم لآخر ذلك خير وأحسن تأويلا} فإن جاء ببرهان من القرآن والسنة قبلنا منه، وإلا تركنا قوله، لأن من لم يأت ببرهان فليس صادقا لقوله تعالى {وقالوا لن يدخل لجنة إلا من كان هودا أو نصارى تلك أمانيهم قل هاتوا برهانكم إن كنتم صادقين} وقد علم كل ذي حس صحيح من الناس أن الاستدلال على القول شيء آخر غير القول المستدل عليه، فقد أدى التقليد أقواما إلى أقوال صحاح والتقليد فاسد، لكن البحث أوقعهم عليها فصادفوا أقوالا فيها أحاديث صحاح لم تبلغهم قط، ولا استدلوا بها. ومن علم كيفية المقدمات علم أن من المقدمات الفاسدة تنتج إنتاجا صحيحا في بعض الأوقات، ولكن ذلك لا يصحب بل يخون كثيرا، وقد بينا هذا في كتابنا الموسوم، بكتاب التقريب بيانا كافيا، والحمد لله رب العالمين كثيرا. فقد صح

which he exercises religious scruple to produce a demonstration from the text, if he is truthful, because He Most High says: {O you who believe, obey Allah and obey the Messenger and those vested with authority among you. If you dispute concerning anything, refer it back to Allah and the Messenger, if you believe in Allah and the Last Day. That is better and fairest in outcome.} If he produces a demonstration from the Quran and the Sunnah, we accept it from him; otherwise, we reject his position, because anyone who produces no demonstration is not truthful, as He Most High says: {They said, "None will enter Paradise unless they are Jews or Christians." Those are their wishes. Say, "Bring your demonstration, if you are truthful."} Every person of sound perception knows that reasoning in support of a position is something distinct from the position supported by that reasoning. Uncritical adherence has led some people to correct positions, although uncritical adherence is unsound. Their investigation nevertheless brought them to those positions, and they happened upon positions for which there are authentic reports that had never reached them and upon which they had not based their reasoning. Anyone who knows the nature of premises knows that unsound premises sometimes yield a correct conclusion. But this does not hold consistently; rather, it frequently fails. We have explained this adequately in our book entitled The Book of Approximation. Abundant praise belongs to Allah, Lord of the worlds. What we have mentioned has thus established that it is possible that someone who reaches the correct position supported by an inference errs in the manner of making that inference. It has also been established that a person may be correct at the outset of his reasoning, but then fail to do it full justice and consequently err in the position supported by that reasoning. Some people have reasoned from authentic texts, but then interpreted into them what they do not contain and extended them by analogy to things not mentioned in them. They were correct in adducing the text as evidence, but mistaken in applying its ruling to something not present in that text. Saʿd, may Allah be pleased with him, inferred the prohibition of white grain altogether from the Prophet's ﷺ prohibition of fresh dates in exchange for dried dates. This establishes that we are not obliged to follow the reasoning of those who issue legal opinions. We are obliged only to follow the legal opinion if a text or consensus supports it, and we pay no heed

بما ذكرنا أنه قد يخطىء في كيفية الاستدلال من يصيب في القول المستدل عليه. وقد صح أيضا أنه قد يصيب المرء في ابتداء الاستدلال، ثم لا يوفيه حقه فيخطىء في القول المستدل عليه، فقد استدل قوم بنصوص صحاح ثم تأولوا فيها ما ليس فيها، وقاسوا عليها ما لم يذكر فيها، وأصابوا في الاستدلال بالنص وأخطؤوا في الحكم به فيما ليس موجودا في ذلك النص. وقد استدل سعد رضي الله عنه على تحريم البيضاء جملة بنهي النبي صلى الله عليه وسلم عن الرطب بالتمر فصح بهذا أنه ليس علينا اتباع استدلال القائلين بالفتيا، وإنما علينا اتباع الفتيا إن أيدها نص أو إجماع، ولا نبالي أخطأ قائلها في استدلاله عليها أم أصاب. وكذلك يلزمنا ترك الفتيا إذا لم يقم عليها برهان من النص أو الإجماع، وإن استدل قائلها بنص صحيح إلا أنه ظن أن ذلك النص يوجب ما أفتى به. وذلك النص في الحقيقة غير موجب لتلك الفتيا، وأيضا فإن من المسائل مسائل ليس يروى فيها نص وإنما هي إجماع مجرد على أمر أمره النبي صلى الله عليه وسلم كإجماع الناس على القراض وكإجماع طوائف من الناس على الإيجاب في دية الذمي إذا قتله ذمي ثمانمائة درهم، أو ستة أبعرة وثلثي بعير، واختلف آخرون في الزيادة على ذلك إلى أن ساواه قوم بدية المسلم، وقال آخرون: نصف دية المسلم، وقال آخرون: ثلث دية المسلم، فاحتج الموجبون في ذلك ثمانمائة درهم أو ستة أبعرة وثلثي بعير، بأن قالوا: هذا مجمع على وجوبه، وما زاد على ذلك فمختلف فيه، وذكروا ما رويناه من طريق يونس بن عبيد أن الحسن البصري قال: دية اليهودي والنصراني ثمانمائة درهم. وقال بهذا المقدار في دية المجوسي خاصة مالك والشافعي. ورووه عن عثمان رضي الله عنه. واحتج من أوجب في ذلك نصف الدية بروايات عن بعض الصحابة، وآثار من طريق عمرو بن شعيب عن أبيه عن جده، وهي صحيفة لا تصح، وقد اختلف الصحابة في هذا فبطل هذا القول، واحتج من أوجب في ذلك ثلث الدية وهم الشافعي وأصحابه، بأن رووا ذلك عن بعض الصحابة، وقد قلنا إن الصحابة

to whether the person who gave it erred or was correct in his reasoning in support of it. Likewise, we must reject a legal opinion if no demonstration from a text or consensus supports it, even if the person who gave it adduced an authentic text, but supposed that the text required the opinion he issued, whereas in reality that text does not require that legal opinion. Furthermore, there are questions concerning which no text is transmitted, and which rest solely upon consensus concerning something the Prophet ﷺ commanded. Examples include people's consensus concerning profit-sharing investment, and the consensus of groups of people that the blood money for a protected non-Muslim, when killed by another protected non-Muslim, must be eight hundred dirhams or six camels and two-thirds of a camel. Others disagreed concerning an increase beyond that, to the point that some made it equal to the blood money for a Muslim. Others said half the blood money for a Muslim, and others said one-third of the blood money for a Muslim. Those who require eight hundred dirhams or six camels and two-thirds of a camel argued: "There is consensus that this is obligatory, while anything beyond it is disputed." They cited what we have transmitted through Yūnus ibn ʿUbayd, that al-Ḥasan al-Baṣrī said: "The blood money for a Jew or a Christian is eight hundred dirhams." Mālik and al-Shāfiʿī advocated this amount specifically for the blood money for a Zoroastrian, and they transmitted it from ʿUthmān, may Allah be pleased with him. Those who require half the blood money argued on the basis of transmissions from some of the Companions and reports transmitted through ʿAmr ibn Shuʿayb, from his father, from his grandfather. These constitute a written collection that is not authentic. The Companions disagreed on this, so this position is invalid. Those who require one-third of the blood money, namely al-Shāfiʿī and his followers, argued by transmitting this from some of the Companions. We have already said that the Companions disagreed on this, so some of them cannot constitute authoritative evidence in this matter to the exclusion of others. Some of al-Shāfiʿī's followers argued for this by claiming that it was the minimum stated amount. This is false, because of the statement of al-Ḥasan that we cited just now. Some among them who knew of the disagreement said: "We did not adopt this position for any of these reasons, but because He Most High says: {Does he possess knowledge of the unseen, so that he sees? Or

مختلفون في ذلك، فليس بعضهم في ذلك حجة دون بعض. واحتج في ذلك بعض أصحاب الشافعي بأن ادعى أنه أقل ما قيل؛ وهذا باطل لما أوردناه من قول الحسن آنفا، وقال بعضهم ممن يعرف الاختلاف: لم نقل ذلك لشيء من هذا كله لكن لقوله تعالى {أعنده علم لغيب فهو يرى * أم لم ينبأ بما في صحف موسى} فوجب ألا يساوى به المسلم ولا المسلمة، فوجب حطه إلى ثلث الدية.

has he not been informed of what is in the scriptures of Moses?} It therefore follows that neither a Muslim man nor a Muslim woman may be made equal to him, and that his blood money must consequently be reduced to one-third of the blood money."[9][10][11][12][13][14]

L1987–2001 Abu Muhammed said: This argument is utterly unsound, because they treat the two equally in that, if a Muslim wrongfully seizes a protected non-Muslim's property, the protected non-Muslim makes him repay what he seized; in amputating the hands of both for theft; and in requiring each to swear an oath to the other in litigation. Furthermore, they have made the blood money for a protected non-Muslim greater than the compensation for a Muslim woman's hand and the compensation for her eye, and have equated it with the compensation for a wound reaching the membrane surrounding the brain in a free Muslim man. There is no doubt that the inviolability of a single hair of a Muslim is greater than the inviolability of every protected non-Muslim on earth; how much more, then, a member of a Muslim's body!

وقال أبو محمد: وهذا احتجاج فاسد البتة، لأنهم يساوون بينهما في أنه إن غصب المسلم مال ذمي أن يغرمه الذمي ما غصب، وفي قطعهما في السرقة، ويحلف كل واحد منهما للآخر في الدعوى. وأيضا فقد جعلوا دية الذمي أكثر من دية يد المسلمة ومن دية عينها، وساووه بمأمومة الحر المسلم، ولا شك في أن حرمة شعرة من مسلم أعظم من حرمة كل ذمي في الأرض، فكيف عضو من أعضاء المسلم، ونجدهم قد فضلوا على المسلم في بعض المواضع، فقالوا: لا يقتل الكافر الحر إذا قتل عبدا مسلما، فجعلوه ههنا أعظم حرمة من المسلم، وهذا قول سوء تقشعر منه الجلود. ويلزمهم على هذا أن أبا جهل وأبا لهب كانا أعظم حرمة من زيد بن حارثة وبلال بعد إسلامهما، وقبل عتقهما، ومعاذ الله من هذا. وإنما يجب استعمال قوله عز وجل {أعنده علم لغيب فهو يرى} في ألا يساوى بينهما في القود أصلا، وأما في الحقوق الواجبة فيما دون الأجسام والكرامة والحرمة فليس التساوي فيها تساويا في القدر، لأنه لا خلاف بين أحد من أن أحكام الأموال يستوي فيها أبو بكر والصحابة وأهل الذمة، وبالله تعالى التوفيق، فكان الواجب ألا يكلف الذمي غرما بعد الجزية إلا ما أوجبه نص أو إجماع، وقد أوجب الإجماع المذكور عليه إما ثمانمائة درهم، وإما ستة أبعرة وثلثي بعير، ووقع التنازع في الزيادة فلما لم يأت بشيء من ذلك نص صحيح وجب أن يطرح ولا يلتفت إليه. فإن قالوا بتقليد صاحب في ذلك، قيل لهم: ليس الصاحب الذي قلدتم بأولى من صاحب آخر خالفه في ذلك، مع أن التقليد كله باطل على ما سنبينه في بابه من ديواننا هذا إن شاء الله تعالى. فإن قال قائل: أنتم متناقضون في قولكم بأقل ما قيل في المقادير اللازمة في الأموال والحدود وفي الأعداد كلها وترككم

[9] **Translator's note (L1979):** The wording around "the truth is more with him" is syntactically awkward: الحق أكثر follows "that one person's transmission" without a clear grammatical connection. The translation reflects the apparent argument without silently replacing the wording.

[10] **Translator's note (L1980):** The phrase إن حلف المدعى له ما شاهده is awkward or corrupt. Literally, its ending reads approximately "if the claimant swears what his witness"; the translation supplies the minimally implied act of attestation. The context concerns an oath accompanying a single witness's testimony.

[11] **Translator's note (L1982):** The opening word السعد, "good fortune," completes the preceding unit's sentence. The expression زيادة يتورع فيها, rendered "an increment concerning which he exercises religious scruple," is unusual in this argument. Its wording has been retained rather than replaced with a conjectural reading.

[12] **Translator's note (L1984):** البيضاء, literally "the white [commodity]," appears to denote wheat or white grain in a transaction, but the precise commodity and scope of the transaction are not explicit in this segment. The wording has not been expanded into an unstated sale arrangement.

[13] **Translator's note (L1986):** The Quranic quotation as supplied is from 53:35–36 and has no evident connection to the argument about equality and blood money. It has been translated as written, without substituting a different verse.

[14] **Qur'an references (L1979):** Qur'an 5:105 (Al-Ma'idah); Qur'an 4:84 (An-Nisa); Qur'an 4:59 (An-Nisa); Qur'an 2:111 (Al-Baqarah); Qur'an 53:36 (An-Najm).

We also find that they have given him precedence over a Muslim in certain instances, saying: A free unbeliever is not executed if he kills a Muslim slave. Here, then, they have made his inviolability greater than the Muslim's. This is an evil statement at which the skin shudders. It follows necessarily from their position that Abu Jahl and Abu Lahab had greater inviolability than Zayd ibn Harithah and Bilal after their conversion to Islam and before their emancipation. Allah forbid such a thing! His saying, Mighty and Majestic, {Does he possess knowledge of the unseen, so that he sees?}, must be applied solely to preclude treating the two equally in retaliatory execution. As for enforceable rights concerning matters below bodily integrity, dignity, and inviolability, equality in these does not amount to equality in rank, since no one disputes that Abu Bakr, the Companions, and protected non-Muslims are equal under the rules governing property. Success comes through Allah Most High. What was obligatory, therefore, was that a protected non-Muslim should not be charged any payment beyond the poll tax except what a text or consensus makes obligatory. The aforementioned consensus has made obligatory upon him either eight hundred dirhams or six camels and two-thirds of a camel. The additional amount is disputed. Since no authentic text has prescribed any of that, it must be discarded and disregarded. If they invoke following a Companion's authority in this matter, they are told: The Companion whose authority you followed has no stronger claim than another Companion who disagreed with him on this, quite apart from the fact that all uncritical adherence to authority is invalid, as we shall explain in its chapter in this work of ours, if Allah Most High wills. If someone says: You contradict yourselves by accepting the lowest amount proposed concerning obligatory amounts in property, prescribed punishments, and all numerical quantities, and rejecting any addition unless a text makes it obligatory, while also saying that, when something has been agreed upon at some time and certain people then claim that it has ceased to apply, one must continue with it and adhere to what has been agreed to be obligatory until the person claiming that it has ceased to apply supplies a demonstration of that claim. Why, then, have you not said that this ruling is binding only for the period during which its binding force was agreed upon, excluding the times and particular persons or things concerning which its binding force was disputed, just as you said: Regard-

الزيادة إلا أن يوجبها نص مع قولكم إن من اتفق عليه من زمان ما ثم ادعى قوم ارتفاعه، فإن الواجب التمادي عليه، والثبات على ما قد اتفق على وجوبه، حتى يأتي مدعي ارتفاعه ببرهان على ما ادعى من ذلك فهلا قلتم إنه لا يلزم هذا الحكم إلا مدة الزمان الذي اتفق على لزومه فيها دون الأزمان والأعيان التي اختلف في لزوم ذلك فيها ولها، كما قلتم: لا نأخذ في المقادير اللازمة في الأموال والحدود والأعداد إلا بما اتفق عليه دون ما اختلف فيه. قال أبو محمد: فيقال له وبالله تعالى التوفيق: إن هذا شغب ضعيف، وتمويه فاسد، ولا تناقض بين القولين أصلا، بل هما شيء واحد، وباب واحد، لأن الإجماع على وجوب الحكم، وورود النص كالإجماع على أقل المقادير والأعداد، كلاهما قد صح فيه الإجماع، ثم إن الدعوى لانتقال الحكم عما كان علمه، وللزوم النص بعض ما يقتضيه لفظه دون بعض الدعوى للزيادة على أقل ما قيل من المقادير والأعداد ولا فرق، وكلا الأمرين إيجاب شرع وحكم بلا نص، وذلك لا يحل اتباعه. وثباتنا على ما اتفقنا على أنه واجب، أو أنه مباح، أو أنه حرام، وتركنا من فارق ما اتفقنا على وجوبه من المقادير والأعداد ولا فرق، ومسقط الحق بعد وجوبه كالزائد فيه، أو الناقص منه، وكالشارع غيره، ولا فرق بين كل ذلك أصلا، فهو كله باب واحد كما ترى. ولا شغب من أراد التمويه بالفرق بين الأمرين، وإنما موه من موه في ذلك، وغلط من غلط، لأنه رأى أحد الأمرين زيادة على ما اتفق عليه، ورأى الآخر خروجا عما اتفق عليه، فظن أنهما بابان مختلفان، فأخطأ في ذلك بل هو كله باب واحد، لأنه كله ممن خالفنا خروج عما اتفق عليه بلا دليل، ومفارقة ما أجمع عليه بلا برهان، وهو كله في مذهبنا نحن باب واحد، لأنه كلها منا ثبات على ما اتفق عليه، ولزوم لما صح الإجماع فيه، وامتناع من مفارقته، وبالله تعالى التوفيق وأيضا فإنه لم يقل قط مسلم أن النبي صلى الله عليه وسلم إذا حكم اليوم بحكم ما أن هذا الحكم لا يلزم الناس غدا إلا باستئناف برهان مجدد، بل الأمة كلها مجمعة

على وجوب حكم النص وتماديه إلى يوم القيامة. وكذلك حكمه عليه السلام على زان أو سارق، هو حكم منه على كل زان أو سارق إلى يوم القيامة. وهكذا كل ما حكم به النص في عين ما هو حكم في نوع تلك العين أبدا، ولو كان خلاف ذلك ونعوذ بالله من هذا الظن لبطلت لوازم نبوته صلى الله عليه وسلم في الزمان الآتي بعده وهذا كفر من معتقده فصح أن حكمه صلى الله عليه وسلم في زمانه حكم باق في كل زمان أبد الأبد ولم يقل قط مسلم إنه صلى الله عليه وسلم إذا حكم بأخذ درهم أو ضرب عشرة أسواط أو إيجاب ركعتين، أو صوم يوم إنه يجب بذلك أخذ درهمين، وضرب عشرين سوطا، أو إيجاب أربع ركعات وصوم يومين، بل هذه حدود الله تعالى التي حرم تعديها، وأخبر أن متعديها من الظالمين بقوله تعالى {يأيها لنبي إذا طلقتم لنسآء فطلقوهن لعدتهن وأحصوا لعدة وتقوا لله ربكم لا تخرجوهن من بيوتهن ولا يخرجن إلا أن يأتين بفاحشة مبينة وتلك حدود لله ومن يتعد حدود لله فقد ظلم نفسه لا تدرى لعل لله يحدث بعد ذلك أمرا} فهذا فرق أوضح من الشمس لا يراها العميان، وقد تغيب عن بعض الأماكن في بعض الأوقات. وهذا برهان لا يغيب نوره أبدا، ويراه كل ذي عقل وحس سليم ممن خوطب بالديانة، وأيضا فإن أقل ما قيل حق ويقين، لأنه إجماع وخصمنا موافق لنا على وجوبه والزيادة عليه شك، ودعوى وظن، ولا يحل رفع اليقين بالشك ولا ترك الحق بالظن، ولا مفارقة الواجب بالدعوى، وقد حرم الله تعالى ذلك، إذ يقول عز وجل {وما لهم به من علم إن يتبعون إلا لظن وإن لظن لا يغني من لحق شيئا} وفيما ذكرنا كفاية لمن له عقل ونصح نفسه، وبالله تعالى التوفيق. فإن قال قائل: أنتم تقولون إن الإجماع والنص أصلان، والعمل بهما فرض، وأنتم تأخذون في النص بالزائد أبدا، ولا تأخذون بالمتيقن عليه، وتأخذون في الإجماع بأقل ما قيل، وهو المتفق عليه، فكيف هذا؟. فالجواب، وبالله تعالى التوفيق:

ing obligatory amounts in property, prescribed punishments, and numerical quantities, we accept only what is agreed upon, excluding what is disputed? Abu Muhammed said: He is answered—and success comes through Allah Most High—that this is feeble disputation and unsound obfuscation. There is no contradiction whatsoever between the two statements. Rather, they are one and the same thing and belong to a single category, because consensus on the binding force of a ruling and the establishment of a text is like consensus on the lowest amounts and numerical quantities: consensus has been authentically established in both cases. Then the claim that the ruling has shifted from what it was known to be, and that the text binds only some of what its wording entails, to the exclusion of the rest, is like the claim that an addition must be made to the lowest amounts and numerical quantities proposed; there is no difference. Both involve imposing a religious prescription and a ruling without a text, and following that is impermissible. Our adherence to what we have agreed is obligatory, permissible, or forbidden is like our rejection of anyone who departs from the amounts and numerical quantities whose obligatory character we have agreed upon; there is no difference. Someone who cancels a right after it has become obligatory is like someone who adds to it, subtracts from it, or legislates something else in its place. There is absolutely no difference between any of these. As you see, it all belongs to a single category, despite the disputation of anyone seeking to obscure matters by distinguishing between the two cases. Those who obscured matters here, and those who erred, did so only because they saw one case as an addition to what was agreed upon and the other as a departure from what was agreed upon, and therefore supposed that these were two different categories. They were mistaken. Rather, all of it belongs to a single category, because all of it, on the part of those who disagree with us, constitutes departure from what was agreed upon without evidence and abandonment of what was established by consensus without demonstration. In our own position, too, it all belongs to a single category, because all of it, on our part, constitutes adherence to what was agreed upon, commitment to that concerning which consensus has been authentically established, and refusal to depart from it. Success comes through Allah Most High. Furthermore, no Muslim has ever said that, if the Prophet ﷺ issues a ruling today,

that ruling does not bind people tomorrow unless a fresh demonstration is produced anew. Rather, the entire community agrees that the ruling of the text is binding and continues until the Day of Resurrection. Likewise, his ruling, peace be upon him, concerning a fornicator or a thief is a ruling by him concerning every fornicator or thief until the Day of Resurrection. In the same way, every ruling that a text gives concerning a particular individual or thing is forever a ruling concerning the class to which that individual or thing belongs. Were it otherwise—and we seek refuge in Allah from this supposition—the binding implications of his prophethood ﷺ for the time following him would be nullified. This constitutes unbelief on the part of anyone who holds it. It is thus established that his ruling ﷺ in his own time remains a ruling in every age, for ever and ever. No Muslim has ever said that, if he ﷺ rules that one dirham be taken, ten lashes administered, two units of prayer made obligatory, or one day fasted, this thereby makes it obligatory to take two dirhams and administer twenty lashes, or to make four units of prayer obligatory and fast two days. Rather, these are the limits of Allah Most High, which He has forbidden people to transgress, and He has declared that those who transgress them are among the wrongdoers, in His saying, Most High: {O Prophet, when you divorce women, divorce them for their waiting period, and count the waiting period, and fear Allah, your Lord. Do not expel them from their homes, nor should they leave, unless they commit a manifest indecency. Those are the limits of Allah. Whoever transgresses the limits of Allah has wronged himself. You do not know: perhaps Allah will bring about some matter after that.} This, then, is a distinction clearer than the sun: the blind do not see the sun, and it may be absent from some places at some times, whereas this is a demonstration whose light is never absent and which everyone possessed of reason and sound perception, among those addressed by religion, can see. Furthermore, the lowest amount proposed is truth and certainty, because it is established by consensus, and our opponent agrees with us that it is obligatory. An addition to it is doubt, assertion, and conjecture. It is impermissible to overturn certainty through doubt, abandon truth through conjecture, or depart from what is obligatory through an assertion. Allah Most High has forbidden this, saying, Mighty and Majestic: {They have no knowledge of it. They follow nothing but conjecture, and conjecture avails

إن الإجماع راجع إلى النص، وإلى التوقيف كما بينا في أول الكلام في الإجماع، وإنما أخذنا به، لأنه نقل العمل أو إقرار على أمر معلوم علمه عليه السلام، فأقره ولم ينكره، وليس اختلاف الموجبين للمقادير المختلفة في الأحكام نقلا لشيء من ذلك، وإنما هو أن ما عدم أن يقوم عليه دليل نص، فإما رأى من قائله أو قياس أو تقليد، وكل ذلك باطل ودعوى بلا دليل فلذلك لزم تركه. وأما الزيادة في النص من أحد الرواة، فهو نقل صحيح، والأخذ بالنقل الصحيح واجب، والسبب الموجب لقبول الزيادة من العدل في الرواية هو السبب نفسه الموجب لقبول أقل ما قيل في الإجماع، إنما ذلك قبول ما صح من النقل فقط. وأما ما اختلف فيه، ولم يأت أحد من المختلفين فيه بنص فليس نقلا، والسبب المانع من قبول التقليد هو السبب المانع من قبول ما زاده قائل على ما اتفق عليه هو وغيره من العلماء بأجمعهم دون دليل يأتي به يوجب زيادته ما زاد وهو كله تقليد. وقد قال بعض الشافعيين: محتجا في أخذ الشافعي رحمه الله في دية اليهودي والنصراني، بأنها ثلث دية المسلم، بأن ذلك أقل ما قيل. قال أبو محمد: وليس كذلك، وقد روينا عن يونس بن عبيد عن الحسن: أن دية النصراني واليهودي ثمانمائة درهم، وقد صح عن بعض المتقدمين أنه لا دية له، فليس ثلث الدية أقل ما قيل. وأما نحن فإنا نقول: إنه لا دية لذمي أصلا، لا يهودي ولا نصراني، ولا مجوسي إذا قتله مسلم خطأ أو عمدا، وإن قتله عندنا يهوديا كان أو نصرانيا أو مجوسيا أقل ما قيل، وهو ثمانمائة درهم أو ستة أبعرة وثلثا بعير. وبرهاننا على ذلك أن الله تعالى إنما ذكر قبل الخطأ والدية فيه إن كان المقتول مؤمنا، هذا هو نص الآيات الواردات في ذلك، فلم يذكر الله تعالى لذمي دية. وقال عليه السلام: من قتل له قتيل فأهله بين خيرتين إما أن يأخذوا الدية، وإما أن يستقيدوا، أو كما قال عليه السلام. ونهى عليه السلام أن يقتل مؤمن بكافر فبطلت الدية إن قتله مسلم، لأنه عليه السلام إنما جعل الدية في العمد حيث يكون الخيار فيها أو في القود، وليس ذلك بين المؤمن والكافر،

nothing against the truth.} What we have mentioned suffices for anyone who possesses reason and deals sincerely with himself. Success comes through Allah Most High. If someone says: You say that consensus and the text are two foundations and that acting upon them is obligatory, yet with a text you always accept the additional material and do not accept only what is certain, while with consensus you accept the lowest amount proposed, which is what is agreed upon. How is this? The answer—and success comes through Allah Most High—is that consensus goes back to the text and to instruction received from revelation, as we explained at the beginning of our discussion of consensus. We accept it only because it is a transmission of practice or an approval of a known matter of which he, peace be upon him, was aware, and which he approved and did not condemn The disagreement among those who prescribe different amounts in legal rulings is no transmission of any such thing. Rather, whatever lacks supporting textual evidence is either the personal opinion of the person proposing it, analogy, or uncritical adherence to authority. All of that is invalid and is assertion without evidence; it must therefore be rejected. An addition to the text supplied by one of its transmitters, however, is an authentic transmission, and accepting authentic transmission is obligatory. The reason that requires acceptance of additional material from a morally upright transmitter in a narration is the very same reason that requires acceptance of the lowest amount proposed in consensus: this is simply acceptance of what has been authentically transmitted. As for something disputed, for which none of those disputing it has supplied a text, that is no transmission. The reason that prevents acceptance of uncritical adherence to authority is the reason that prevents accepting what a speaker adds to that upon which he and all the other scholars have agreed, without his producing evidence that necessitates the addition he has made. All of this is uncritical imitation. One of the Shafiʿis argued, in support of al-Shafiʿi's adoption—may Allah have mercy on him—of the position that the blood money for a Jew or Christian is one-third of the blood money for a Muslim, that this is the lowest amount proposed. Abu Muhammed said: This is not so. We have transmitted, through Yunus ibn ʿUbayd, from al-Hasan, that the blood money for a Christian or Jew is eight hundred dirhams. It has also been authentically reported from one of the earlier authorities that no

لكنه بين الكفار فيما بينهم وبين المؤمنين فيما بينهم، فصح قولنا وبالله تعالى التوفيق.
وحرام أخذ شيء من مال مسلم إلا بنص أو إجماع، وأما إن قتل ذمي مسلما عمدا فقد بطلت ذمته، ولا بد من قتله وأخذ ماله كله، ولا رأي في ذلك لولي المقتول ولا دية، وحديث عبد الله بن سهل ثابت العمل، وليس فيه ذكر أن الدية التي ذكر عليه السلام كانت في عمد، إذ قد يقتلونه خطأ، ولا في قوله عليه السلام في ذلك الحديث: أتقسمون على رجل فيسلم برمته أنه لو أسلم لكان فيه لولي المقتول خيار، فلا يجوز التزيد في الحديث ما ليس فيه، وسورة براءة مبينة لأحكام أهل الذمة التي لا يجوز تعديها وهي ناسخة لكل ما كان قبلها. وقد احتج بعض الموافقين لنا في هذا الفصل بأن قال: يقال لمن قال قد اتفق على وجوب حكم ما في هذه المسألة، فلا تبرأ من ذلك الحكم إلا بإجماع آخر على البراءة منه. قال فيقال له: لو شهد عدلان على أن زيدا غصب مالا من عمرو، ولم يثبت قدر ذلك المال، للزم على قولكم أن يقال للمشهود عليه قد ثبت عليك حق فلا تبرأ حتى يقر المغصوب منه ببراءتك من كل حق له عندك. فلما أجمع الناس بلا خلاف، على أنه لا يقال له ذلك. لكن يقال له قد ثبت قبلك حق ما فأقر بما شئت، واحلف على ما أنكرت، ولا يلزمك غير ذلك، صح قولنا بأقل ما قيل، وبطل اعتراضكم وبالله تعالى التوفيق. واحتج أيضا بأن قال من الدليل على الأخذ بأقل ما قيل: إن شاهدين لو شهدا على زيد أنه سرق، وقال أحدهما: ربع دينار، وقال آخر: بل سدس دينار، فإنه يؤخذ بأقل ما اتفقا عليه فلا يقطع ولا يغرم إلا سدس دينار فقط. قال أبو محمد: وهاتان حجتان تلزم أصحاب القياس، وليس مما نرضى أن نحتج به، وإنما اعتمادنا على البراهين الضرورية التي قدمنا وبالله تعالى نعتصم. وقال هذا القائل أيضا: إن المقدرين إذا اختلفا في تقدير السلعة، فإننا نأخذ بما اتفقا عليه. قال: فإن قال لنا قائل فلم تأخذون بالزيادة في الخبر عن النبي صلى الله عليه وسلم وتقولون عند هذا الزائد علم لم يكن عند من لم يأت بتلك الزيادة. فهلا قلتم

blood money is due for him. Thus, one-third of the blood money is not the lowest amount proposed. As for us, we say that no blood money whatsoever is due for a person under a covenant of protection, whether a Jew, Christian, or Magian, if a Muslim kills him accidentally or intentionally. And if he kills him, according to us, whether he is a Jew, Christian, or Magian, the lowest amount proposed, namely eight hundred dirhams or six camels and two-thirds of a camel. Our demonstration of this is that Allah Most High mentioned accidental killing and the blood money due for it only where the person killed is a believer. This is the explicit wording of the verses revealed concerning this; Allah Most High did not mention blood money for a person under a covenant of protection. He, peace be upon him, said: "If someone has a person killed, that person's family has a choice between two alternatives: either to take the blood money or to exact retaliation"—or words as he, peace be upon him, said them. He, peace be upon him, prohibited putting a believer to death for an unbeliever. Blood money is therefore ruled out if a Muslim kills him, because he, peace be upon him, prescribed blood money for intentional killing only where there is a choice between it and retaliation. That does not obtain between a believer and an unbeliever; it obtains among unbelievers themselves and among believers themselves. Thus our position is established, and success comes through Allah Most High. Taking any part of a Muslim's property is forbidden except on the basis of a revealed text or consensus. If, however, a person under a covenant of protection intentionally kills a Muslim, his covenant of protection is void, and he must be killed and all his property taken. The slain person's next of kin has no discretion in this, and there is no blood money. The report concerning ʿAbd Allah ibn Sahl is established as authoritative for practice. It does not mention that the blood money of which he, peace be upon him, spoke concerned an intentional killing, since they might have killed him accidentally. Nor does his statement, peace be upon him, in that report—"Will you swear oaths against a man, so that he is handed over with his rope?"—state that, if he were handed over, there would be in his case a choice for the slain person's next of kin. It is therefore impermissible to add to the report something that it does not contain. The surah Baraʾah sets out the rulings concerning people under covenants of protection, which may not be transgressed, and it abrogates

وعند هذا المقدار الزائد علم زائد بقيمة هذه السلعة فهلا أخذتم به؟. قال أبو محمد: وهذا الذي اعترض به على القائل بما ذكرنا اعتراض فاسد، لكنا نقول الجواب عن هذا: أن تقدير المقدار ليس من باب الخبر في الدين، لأن الخبر نقل عن مشاهدة يوجب حكما على الناس كلهم، وتقدير المقدار إنما هو من باب الشهادة التي لا يقبل فيها إلا اثنان، أو واحد مع يمين الطالب، فلو كان مع هذا المقدار الزائد آخر عدل يشهد بتلك الزيادة لأخذنا بها، وإن كان ذلك فيما يؤخذ فيه باليمين مع الشاهد حلف المشهود له مع ذلك المقدر الزائد، واستحق الزيادة، وبالله تعالى التوفيق.

everything that preceded it. One of those who agrees with us on this issue argued as follows: It should be said to anyone who says, "There is agreement that some ruling is obligatory in this question, so you cannot be released from that ruling except through another consensus establishing release from it": "If two upright witnesses testified that Zayd had wrongfully seized property from ʿAmr, but the amount of that property was not established, your position would require that the person against whom they testified be told, 'A claim against you has been established, and you cannot be released until the person whose property was seized acknowledges that you are free of every claim he has against you.' Yet everyone agrees, without disagreement, that he is not told this. Instead, he is told, 'Some claim against you has been established: acknowledge whatever you will, and swear an oath concerning what you deny; nothing beyond that is binding upon you.' Thus our position of adopting the lowest amount proposed is established, and your objection is invalid. Success comes through Allah Most High." He also argued: "Evidence for adopting the lowest amount proposed includes the following: if two witnesses testified against Zayd that he had stolen, one saying a quarter of a dinar and the other saying, 'Rather, a sixth of a dinar,' the lowest amount upon which they agreed would be adopted. His hand would not be cut off, and he would be required to repay only a sixth of a dinar." Abu Muhammed said: These two arguments are binding upon the proponents of analogy, but they are not arguments we are content to advance. Our reliance is solely upon the necessary demonstrations we have already presented, and in Allah Most High we seek protection. This speaker also said: "When two appraisers disagree in their valuation of merchandise, we adopt what they agree upon." He said: "If someone says to us, 'Why, then, do you accept additional material in a report from the Prophet ﷺ and say, "The person transmitting this addition possesses knowledge that the person who did not transmit it did not possess"? Why do you not likewise say, "This appraiser who gives the higher valuation possesses additional knowledge of the value of this merchandise"? Why do you not accept it?'" Abu Muhammed said: This objection to the person whose position we have mentioned is an invalid objection. Nevertheless, we say that the answer is that an appraiser's valuation does not belong to the category of reports concerning religion. A report

is a transmission based upon direct observation that entails a ruling binding upon all people. An appraiser's valuation belongs instead to the category of testimony, in which nothing is accepted except two witnesses, or one witness together with the claimant's oath. Thus, if there were, alongside this appraiser who gives the higher valuation, another upright witness testifying to that additional amount, we would accept it. If the matter were one in which an oath together with a witness is accepted, the person in whose favor testimony was given would swear an oath alongside that appraiser who gives

the higher valuation and would be entitled to the additional amount. Success comes through Allah Most High.[15][16][17][18][19][20]

[15]**Translator's note (L1987):** "Protected non-Muslim" renders dhimmī, a non-Muslim subject under a covenant of protection. "Blood money" renders diyah; compensation for individual injuries is distinguished in English. The wording "the protected non-Muslim makes him repay" follows the supplied vocalically unmarked phrase أن يغرمه الذمي; its syntax is awkward, but it concerns restitution by the Muslim who seized the property.

[16]**Translator's note (L1988):** The quoted wording corresponds to Qur'an 53:35, although the supplied Arabic has علم لغيب in place of علم الغيب. Its use to establish unequal treatment in retaliatory execution appears incongruous; the quotation has been retained rather than replaced with another verse. The supplied phrase إن من اتفق عليه من زمان ما is syntactically irregular. The translation follows the apparent sense established by the continuation: something agreed upon at an earlier time.

[17]**Translator's note (L1990):** The phrase عما كان علمه is awkward and possibly corrupt; "from what it was known to be" represents its apparent sense without replacing the Arabic. The comparison between the claim restricting a text and the claim adding to the lowest proposed amount lacks an explicit comparative particle in the supplied Arabic. English requires "is like" to express the apparent construction. The supplied ولا شغب من أراد التمويه is grammatically awkward. "Despite the disputation of anyone seeking to obscure matters" follows its apparent contextual force.

[18]**Translator's note (L1993):** The Qur'anic quotations correspond to 65:1 and 53:28. The supplied transcription repeatedly lacks the initial alif of the definite article in words such as لنبي, لعدة, and لظن; the translations follow the identifiable wording, with no substantive replacement of the quotations. The phrase ولا تأخذون بالمتيقن عليه is awkward. "Do not accept only what is certain" expresses the apparent contrast between accepting additional transmitted wording and limiting an obligation to an agreed minimum. "Instruction received from revelation" renders tawqīf, distinguishing it from the text itself and from independent reasoning.

[19]**Translator's note (L1996):** The sentence beginning "And if he kills him, according to us" is syntactically incomplete: the supplied Arabic has neither an explicit subject identifying the killer nor a governing expression connecting the killing to "the lowest amount proposed." The translation preserves this defect rather than supplying a missing ruling. The supplied قبل الخطأ, literally "before the error," appears to be a transcription error for قتل الخطأ, "accidental killing," which is the reading reflected in the translation. "Handed over with his rope" preserves the report's idiomatic wording for delivering the accused into the claimants' custody.

[20]**Qur'an references (L1987):** Qur'an 65:1 (At-Talaq); Qur'an 53:28 (An-Najm).

L2002–2003 Abu Muhammed said: The position we hold—and success comes through Allah Most High—is that Allah Most High said: “Leave them to their fathers; that is more equitable in Allah’s sight. If you do not know their fathers, then they are your brothers in religion and your clients. There is no blame upon you for what you do mistakenly, but for what your hearts intend. Allah is ever forgiving, merciful.” Then He Most High made blood money obligatory for the accidental killing of a believer. It is therefore binding upon both a believer and a person under a covenant of protection, because of the general applicability of the address and because religion is binding upon every human being and jinn. No revealed text has come imposing blood money for a person under a covenant of protection if he is killed accidentally. It is therefore entirely exempted, whether a Muslim or a person under a covenant of protection inflicted the fatal injury upon him. It is authentically established that the Prophet ﷺ said: “If someone has a person killed, that person’s family has a choice between two alternatives: either blood money is to be paid for him or retaliation is to be exacted”—or words to this effect. It is also authentically established that he, peace be upon him, said: “A Muslim is not to be put to death for an unbeliever.” It is thus established that blood money is obligatory for intentional killing only where a choice must be offered between blood money and retaliation. This does not apply at all when a Muslim kills a person under a covenant of protection. It is therefore ruled out that a Muslim should owe blood money for a person under a covenant of protection, whether for intentional or accidental killing. If a person under a covenant of protection kills another such person, however, he falls within this address, and retaliation or blood money applies between them. There are only two possible positions: either the amount whose obligatoriness is agreed upon, as al-Hasan said, or the blood money that the Messenger of Allah ﷺ adjudged for a Muslim. We examined al-Hasan’s position and found that it had no support whatsoever and no justification, so it fell away. Nor do we know whether there is consensus concerning that amount. Rather, perhaps some scholars have said that no blood money whatsoever is due for a person under a covenant of protection, and perhaps some scholars hold an amount lower than that stated by al-Hasan. Thus this position fell away. We found Allah saying: “And judge between them by what Allah has sent

قال أبو محمد: والذي نقول به، وبالله تعالى التوفيق إن الله تعالى قال {دعوهم لآبآئهم هو أقسط عند الله فإن لم تعلموا آباءهم فإخوانكم في لدين ومواليكم وليس عليكم جناح فيمآ أخطأتم به ولكن ما تعمدت قلوبكم وكان الله غفورا رحيما} ثم أوجب تعالى الدية في قتل المؤمن خطأ فهي لازمة للمؤمن والذمي بعموم الخطاب، ولزوم الدين، لكل إنسي وجني، ولم يأت نص بإيجاب دية لذمي إن قتل خطأ فهو معفو عنه جملة أصابه مسلم أو ذمي وصح عن النبي صلى الله عليه وسلم أنه قال من قتل له قتيل فأهله بين خيرتين وإما أن يودى وإما أن يقاد أو كلام هذا معناه. وصح أنه عليه السلام قال: لا يقتل مسلم بكافر فصح أن الدية لا تجب في العمد إلا حيث يجب التخيير فيها بين الدية وبين القود. وليس ذلك في قتل المسلم الذمي أصلا، فبطل أن يكون على المسلم دية في الذمي لا في عمد ولا في خطأ، فإن قتل الذمي ذميا فهو داخل في هذا الخطاب، والقود بينهما، أو الدية، وليس إلا أحد القولين إما ما اتفق على وجوبه كما قال الحسن وإما الدية التي قضى بها رسول الله صلى الله عليه وسلم في المسلم فنظرنا في قول الحسن فوجدناه لا ينسند أصلا ولا وجه له فسقط. ولا ندري أيضا هل أجمع على مقدار ذلك أو لا؟ بل لعل من العلماء من قال لا دية لذمي أصلا، ولعل في العلماء من يقول بأقل مما قال الحسن فسقط هذا القول ووجدنا الله يقول {وأن حكم بينهم بمآ أنزل لله ولا تتبع أهوآءهم وحذرهم أن يفتنوك عن بعض مآ أنزل لله إليك فإن تولوا فعلم أنما يريد لله أن يصيبهم ببعض ذنوبهم وإن كثيرا من لناس لفاسقون} فصح أن دية الذمي على الذمي كدية المسلم على المسلم، ولسنا في ذلك جاعلين لهم كالمسلمين حاشا لله من ذلك نحكم بينهم بالحكم بين المسلمين. كما أمر الله تعالى، ونحن وهم نقتل الذمي بالذمي، كما نقتله بالمسلم، وليس هذا مساواة المسلم بالمجرم وبالله تعالى حسبنا

down, and do not follow their desires. Beware of them, lest they tempt you away from part of what Allah has sent down to you. If they turn away, then know that Allah intends only to afflict them for some of their sins. Indeed, many people are transgressors." It is thus established that the blood money owed by one person under a covenant of protection for another is like the blood money owed by one Muslim for another. In this we are not making them like Muslims—Allah forbid that! We judge between them according to the judgment applied between Muslims, as Allah Most High commanded. Both we and they put a person under a covenant of protection to death for another person under a covenant of protection, just as we put him to death for a Muslim. This is not equating the Muslim with the criminal. Allah Most High suffices us.[1][2]

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[1] **Translator's note (L2002):** The first Quranic quotation begins دعوهم لآبائهم, literally "Leave them to their fathers," whereas Quran 33:5 has ادعوهم لآبائهم, "Call them by their fathers." The translation follows the supplied wording and does not silently restore the missing initial alif. In the second Quranic quotation, وأن حكم appears in place of وأن احكم, "And judge" (Quran 5:49). The translation reflects the apparent intended imperative; the supplied form is defective. The supplied لا ينسند appears to be a malformed form of لا يستند, "has no support," reflected in the translation.

[2] **Qur'an references (L2002):** Qur'an 33:5 (Al-Ahzab); Qur'an 5:49 (Al-Ma'idah).

الباب 25: ذم الاختلاف

Chapter 25: The Condemnation of Disagreement

Ibn Ḥazm · Arabic–English parallel edition

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[Chapter Twenty-Five: On the Condemnation of Disagreement]

Abu Muhammed said: Some people have said, “This is among the matters in which disagreement is permissible.” Abu Muhammed said: This is false. Disagreement is absolutely impermissible and cannot be allowed, for reasons we shall mention after this. Our obligation is only to follow what the Quran has brought from Allah Most High, who prescribed the religion of Islam for us, and what is authentically established from the Messenger of Allah ﷺ, whom Allah Most High commanded to explain the religion. Thus He Most High said: {With clear proofs and scriptures; and We sent down to you the Reminder so that you might explain to people what was sent down to them, and so that they might reflect.} Nothing further is to be added. And He Most High said: {Forbidden to you are carrion, blood, the flesh of swine, that over which a name other than Allah’s has been invoked, the strangled animal, the animal killed by a blow, the animal killed by a fall, the animal gored to death, and that which a beast of prey has eaten—except what you slaughter—and that which has been slaughtered upon sacrificial stones; and that you seek allotments by divining arrows. That is transgression. Today those who disbelieve have despaired of your religion, so do not fear them, but fear Me. Today I have perfected your religion for you, completed My favor upon you, and approved Islam as your religion. But whoever is compelled by hunger, without inclining toward sin—Allah is indeed forgiving, merciful.} Whatever is authentically established in the two texts, or either of them, is the truth. The agreement of all the people on earth upon it adds nothing to its strength, and its abandonment by those who abandon it does not weaken it. It is therefore established that disagreement must receive no consideration whatsoever.

Some people have erred, saying, “Disagreement is a mercy,” and adducing as evidence what is related from the Prophet ﷺ: “My Companions are like the stars: whichever of them you follow, you will be guided.” Abu Muhammed said: This is among the most unsound statements possible, because if disagreement were a mercy, agreement would be displeasure. This is something no Muslim would say, for there is only agreement or disagreement, and only

[الباب الخامس والعشرون في ذم الاختلاف]

قال أبو محمد قال قوم هذا مما يسع فيه الاختلاف. قال أبو محمد: وهذا باطل والاختلاف لا يسع البتة، ولا يجوز لما نذكره بعد هذا، وإنما الفرض علينا اتباع ما جاء به القرآن عن الله تعالى الذي شرع لنا دين الإسلام وما صح عن رسول الله صلى الله عليه وسلم الذي أمره الله تعالى ببيان الدين فقال تعالى {بلبينات ولزبر وأنزلنا إليك لذكر لتبين للناس ما نزل إليهم ولعلهم يتفكرون} ولا مزيد وقال تعالى {حرمت عليكم لميتة ولدم ولحم لخنزير ومآ أهل لغير لله به ولمنخنقة ولموقوذة ولمتردية ولنطيحة ومآ أكل لسبع إلا ما ذكيتم وما ذبح على لنصب وأن تستقسموا بلأزلام ذلكم فسق ليوم يئس لذين كفروا من دينكم فلا تخشوهم وخشون ليوم أكملت لكم دينكم وأتممت عليكم نعمتي ورضيت لكم لأسلام دينا فمن ضطر في مخمصة غير متجانف لإثم فإن لله غفور رحيم} فما صح في النصين أو أحدهما فهوالحق، ولا يزيده قوة أن تجمع عليه أهل الأرض، ولا يوهنه ترك من تركه، فصح أن الاختلاف لا يجب أن يراعى أصلا. وقد غلط قوم فقالوا: الاختلاف رحمة واحتجوا بما روي عن النبي صلى الله عليه وسلم أصحابي كالنجوم بأيهم اقتديتم اهتديتم. قال أبو محمد: وهذا من أفسد قول يكون، لأنه لو كان الاختلاف رحمة لكان الاتفاق سخطا. هذا ما لا يقوله مسلم، لأنه ليس إلا اتفاق أو اختلاف، وليس إلا رحمة أو سخط، وأما الحديث المذكور فباطل مكذوب من توليد أهل الفسق لوجوه ضرورية: أحدها أنه لم يصح من طريق النقل والثاني أنه صلى الله عليه وسلم لم يجز أن يأمر بما نهى عنه وهو عليه السلام قد أخبر أن أبا بكر قد أخطأ في تفسير فسره، وكذب عمر في تأويل تأوله في الهجرة، وكذب أسيد بن حضير في تأويل تأوله فيمن رجع عليه سيفه وهو يقاتل، وخطأ أبا السنابل في فتيا أفتى بها في العدة،

mercy or displeasure. As for the aforementioned report, it is false and fabricated, concocted by people of transgression, for necessarily conclusive reasons. The first is that it has not been authenticated through transmission. The second is that he ﷺ could not command something he had forbidden. He, peace be upon him, stated that Abu Bakr had erred in an interpretation he gave; declared false an interpretation Umar gave concerning the emigration; declared false an interpretation Usayd ibn Hudayr gave concerning someone whose sword recoiled upon him while he was fighting; and judged Abu al-Sanabil mistaken in a legal opinion he issued concerning the waiting period.[1][2]

L2006 We have already discussed this matter exhaustively in the chapter on invalidating uncritical imitation in this book of ours, which makes presenting it here unnecessary.

L2007 What we have mentioned is sufficient. It is inconceivable, impossible, and absolutely inadmissible that he ﷺ should command adherence to something he has stated to be an error, for he would then have commanded error. Exalted is Allah above that, and far be it from him ﷺ to possess such a quality! He, peace be upon him, has stated that they make mistakes; therefore he cannot command us to follow someone who makes mistakes, unless he ﷺ meant their transmission of what they related from him. This is correct, because they—may Allah be pleased with them—are all trustworthy: whoever transmits from any one of them has been guided.

The third reason is that the Prophet ﷺ does not speak falsehood; rather, his speech is the truth. The comparison made by the person who likens those who are correct to stars is an unsound comparison and an evident falsehood. For someone who intends the direction in which Capricorn rises, but stands facing the direction in which Cancer rises, has not been guided.

[1] **Translator's note (L2005):** The Quranic quotations correspond to 16:44 and 5:3. Their transcription repeatedly omits initial alifs and other orthographic elements; the intended words remain recognizable and are rendered accordingly. The emphatic verb rendered "declared false" can also mean "accused of lying"; here its objects concern the interpretations attributed to Umar and Usayd.

[2] **Qur'an references (L2005):** Qur'an 16:44 (An-Nahl); Qur'an 5:3 (Al-Ma'idah).

وقد ذكرنا هذا المعنى في باب إبطال التقليد من كتابنا هذا، مستوعبا فأغنى عن إيراده ههنا،

وفيما ذكرنا كفاية. فمن المحال الممتنع الذي لا يجوز البتة أن يكون صلى الله عليه وسلم يأمر باتباع ما قد أخبر أنه خطأ فيكون حينئذ أمر بالخطأ تعالى الله عن ذلك وحاشا له صلى الله عليه وسلم من هذه الصفة وهو عليه السلام قد أخبر أنهم يخطئون، فلا يجوز أن يأمرنا باتباع من يخطىء إلا أن يكون صلى الله عليه وسلم أراد نقلهم لما رووا عنه فهذا صحيح لأنهم رضي الله عنهم كلهم ثقات، فعن أيهم نقل فقد اهتدى الناقل والثالث أن النبي صلى الله عليه وسلم لا يقول الباطل بل قوله الحق وتشبيه المشبه للمصيبين بالنجوم تشبيه فاسد، وكذب ظاهر، لأنه من أراد جهة مطلع الجدي قام جهة مطلع السرطان لم يهتد، بل قد ضل ضلالا بعيدا، وأخطأ خطأ فاحشا، وخسر خسرانا مبينا، وليس كل النجوم يهتدى بها في كل طريق، فبطل التشبيه المذكور، ووضح كذب ذلك الحديث وسقوطه وضوحا ضروريا. قال أبو محمد: وقد ذم الله تعالى الاختلاف في غير ما موضع من كتابه قال الله عز وجل {ذلك بأن لله نزل لكتاب بلحق وإن لذين ختلفوا في لكتاب لفي شقاق بعيد} وقال تعالى {كان

Rather, he has strayed far astray, committed a grievous error, and suffered a manifest loss. Not every star provides guidance on every route. Thus the aforementioned comparison is invalid, and the falsity and untenability of that report have become clear with necessary clarity.

Abu Muhammed said: Allah Most High has condemned disagreement in more than one place in His Book. Allah, mighty and majestic, said: {That is because Allah sent down the Book with the truth, and those who disagree concerning the Book are indeed in far-reaching dissension.} And He Most High said: {People were one community; then Allah sent the prophets as bearers of good tidings and as warners, and sent down with them the Book with the truth, to judge between people concerning that over which they disagreed. None disagreed concerning it except those who had been given it, after the clear proofs had come to them, out of mutual aggression. Then Allah guided those who believed, by His permission, to the truth concerning which they disagreed. And Allah guides whomever He wills to a straight path.} And He Most High said, making agreement obligatory and requiring the rejection of disagreement: {O you who believe, fear Allah as He ought to be feared, and do not die except as Muslims. * And hold fast, all together, to the rope of Allah, and do not divide. Remember Allah's favor upon you, when you were enemies and He brought your hearts together, so that by His favor you became brothers. You were on the brink of a pit of the Fire, and He rescued you from it. Thus Allah makes His signs clear to you, so that you may be guided.}[3][4]

لناس أمة واحدة فبعث الله لنبيين مبشرين ومنذرين وأنزل معهم لكتاب بلحق ليحكم بين لناس فيما ختلفوا فيه وما ختلف فيه إلا لذين أوتوه من بعد ما جآءتهم لبينات بغيا بينهم فهدى الله لذين آمنوا لما ختلفوا فيه من لحق بإذنه والله يهدي من يشآء إلى صراط مستقيم} وقال تعالى مفترضا للاتفاق وموجبا رفض الاختلاف {يأيها لذين آمنوا تقوا الله حق تقاته ولا تموتن إلا وأنتم مسلمون * وعتصموا بحبل الله جميعا ولا تفرقوا وذكروا نعمة الله عليكم إذ كنتم أعدآء فألف بين قلوبكم فأصبحتم بنعمته إخوانا وكنتم على شفا حفرة من لنار فأنقذكم منها كذلك يبين الله لكم آياته لعلكم تهتدون}

L2008–2012 up to His saying, Most High: {And hold fast, all together, to the rope of Allah, and do not divide. Remember Allah's favor upon you, when you were enemies and He brought your hearts together, so that by His favor you became brothers. You were on the brink of a pit of the Fire, and He rescued you from

إلى قوله تعالى {وعتصموا بحبل الله جميعا ولا تفرقوا وذكروا نعمة الله عليكم إذ كنتم أعدآء فألف بين قلوبكم فأصبحتم بنعمته إخوانا وكنتم على شفا حفرة من لنار فأنقذكم منها كذلك يبين الله لكم آياته لعلكم تهتدون} وقال تعالى {ولا تكونوا كلذين تفرقوا وختلفوا من بعد ما جآءهم لبينات وأولئك لهم عذاب عظيم} فصح أنه لا هدى في الدين إلا ببيان الله تعالى لآياته، وأن التفرق في الدين حرام لا يجوز وقال تعالى {وأطيعوا الله ورسوله ولا تنازعوا فتفشلوا وتذهب ريحكم وصبروا إن الله مع لصابرين}

[3] **Translator's note (L2007):** The astronomical illustration names al-Jady and al-Saratan, rendered here as Capricorn and Cancer. Al-Jady can also designate the Pole Star. The wording "intends … stands" lacks an explicit conditional link; "but" supplies the apparent relationship without changing the named celestial objects. The Quranic quotations correspond to 2:176, 2:213, and 3:102–103. Recurrent omissions of initial alifs in the transcription do not obscure the intended wording.

[4] **Qur'an references (L2007):** Qur'an 3:102 (Ali 'Imran); Qur'an 3:103 (Ali 'Imran).

it. Thus Allah makes His signs clear to you, so that you may be guided.} And He Most High said: {Do not be like those who divided and disagreed after the clear proofs had come to them. Those shall have a tremendous punishment.} It is therefore established that there is no guidance in religion except through Allah Most High's clarification of His signs, and that division in religion is forbidden and impermissible. And He Most High said: {Obey Allah and His Messenger, and do not dispute, lest you falter and your strength depart. Be patient; indeed, Allah is with the patient.} And He Most High said: {He has prescribed for you of religion what He enjoined upon Noah, and that which We have revealed to you, and what We enjoined upon Abraham, Moses, and Jesus: establish the religion and do not divide within it. What you call the polytheists to is grievous to them. Allah chooses for Himself whomever He wills, and guides to Himself whoever turns to Him.} And He Most High said: {And this is My path, straight, so follow it, and do not follow the other paths, lest they separate you from His path. This He has enjoined upon you, so that you may be mindful of Him.} And He Most High said: {Indeed, those who divided their religion and became sects—you have no part with them in anything. Their affair rests only with Allah; then He will inform them of what they used to do.} And He Most High said: {Do they not reflect upon the Quran? Had it been from anyone other than Allah, they would have found much disagreement within it.}

Abd Allah ibn Yusuf related to us: Ahmad ibn Fath related to us: Abd al-Wahhab ibn Isa related to us: Ahmad ibn Muhammed related to us: Ahmad ibn Ali related to us: Muslim ibn al-Hajjaj related to us: Abu Kamil Fudayl ibn Husayn al-Jahdari related to us: Ahmad ibn Zayd related to us: Abu Imran al-Jawni related to us, saying: Abd Allah ibn Rabah al-Ansari wrote to me that Abd Allah ibn Amr said: "One day I went early to the Messenger of Allah ﷺ. He heard the voices of two men who disagreed concerning a verse. The Messenger of Allah came out to us, anger discernible on his face, and said: 'Those before you perished only through their disagreement concerning the Book.'"

Abd al-Rahman ibn Abd Allah related to us: Abu Ishaq al-Balkhi related to us: al-Firabri related to us: al-Bukhari related to us: Abu al-Walid—that is,

وقال تعالى {شرع لكم من لدين ما وصى به نوحا ولذي أوحينآ إليك وما وصينا به إبراهيم وموسى وعيسى أن أقيموا لدين ولا تتفرقوا فيه كبر على لمشركين ما تدعوهم إليه لله يجتبي إليه من يشآء ويهدي إليه من ينيب} وقال تعالى {وأن هذا صراطي مستقيما فتبعوه ولا تتبعوا لسبل فتفرق بكم عن سبيله ذلكم وصاكم به لعلكم تتقون} وقال تعالى {إن لذين فرقوا دينهم وكانوا شيعا لست منهم في شيء إنمآ أمرهم إلى لله ثم ينبئهم بما كانوا يفعلون} وقال تعالى {أفلا يتدبرون لقرآن ولو كان من عند غير لله لوجدوا فيه ختلافا كثيرا} حدثنا عبد الله بن يوسف نا أحمد بن فتح، نا عبد الوهاب بن عيسى، نا أحمد بن محمد، نا أحمد بن علي، نا مسلم بن الحجاج، ثنا أبو كامل فضيل بن حسين الجحدوي، نا أحمد بن زيد، ثنا أبو عمران الجوني قال: كتب إلى عبد الله بن رباح الأنصاري أن عبد الله بن عمرو قال هجرت إلى رسول الله صلى الله عليه وسلم يوما فسمع أصوات رجلين اختلفا في آية فخرج علينا رسول الله يعرف في وجهه الغضب فقال: إنما هلك من كان قبلكم باختلافهم في الكتاب. حدثنا عبد الرحمن بن عبد الله، نا أبو إسحاق البلخي، نا الفربري، نا البخاري، حدثنا أبو الوليد هو الطيالسي، نا شعبة، أخبرني عبد الملك بن ميسرة قال: سمعت النزال بن سبرة قال: سمعت عبد الله بن مسعود قال سمعت رجلا قرأ آية سمعت من رسول الله صلى الله عليه وسلم خلافها فأخذت بيده فأتيت به رسول الله صلى الله عليه وسلم فقال كلاكما محسن قال شعبة أظنه قال لا تختلفوا فإن من قبلكم اختلفوا فهلكوا. حدثنا محمد بن سعيد، ثنا أحمد بن عون الله، ثنا قاسم بن أصبغ، أنبأنا محمد بن عبد السلام الخشني، نا بندار، نا غندر، نا شعبة عن عبد الملك بن ميسرة عن النزال عن ابن مسعود عن النبي صلى الله عليه وسلم بهذا الحديث وذكر شعبة في آخره قال حدثني مسعر عنه فرفعه إلى ابن مسعود عن رسول الله صلى الله عليه وسلم قال ولا تختلفوا حدثنا عبد الله بن يوسف

al-Tayalisi—related to us: Shu'bah related to us: Abd al-Malik ibn Maysarah informed me, saying: I heard al-Nazzal ibn Sabrah say: I heard Abd Allah ibn Mas'ud say: "I heard a man recite a verse differently from how I had heard it from the Messenger of Allah ﷺ. So I took him by the hand and brought him to the Messenger of Allah ﷺ, who said: 'Both of you have done well.'" Shu'bah said: I think he said, "Do not disagree, for those before you disagreed and perished."

Muhammed ibn Sa'id related to us: Ahmad ibn Awn Allah related to us: Qasim ibn Asbagh related to us: Muhammed ibn Abd al-Salam al-Khushani informed us: Bundar related to us: Ghundar related to us: Shu'bah related to us, from Abd al-Malik ibn Maysarah, from al-Nazzal, from Ibn Mas'ud, from the Prophet ﷺ, this same report. At its end Shu'bah mentioned, saying: "Mis'ar related it to me from him," and traced it back to Ibn Mas'ud, from the Messenger of Allah ﷺ, who said: "And do not disagree."

Abd Allah ibn Yusuf related to us: Ahmad ibn Fath related to us: Abd al-Wahhab ibn Isa related to us: Ahmad ibn Muhammed related to us: Ahmad ibn Ali related to us: Muslim related to us: Ubayd Allah ibn Mu'adh related to us: My father related to us: Shu'bah related to us, from Muhammed ibn Ziyad, who heard Abu Hurayrah relate from the Prophet ﷺ that he said: "Leave me alone so long as I leave you alone, for those before you perished only through their many questions and their disagreement with their prophets." Through the same chain to Muslim: Yahya ibn Yahya, Ishaq ibn Mansur, and Ahmad ibn Sa'id ibn Sakhr al-Darimi related to us. Yahya said: Abu Qudamah al-Harith ibn 'Ubayd informed us. Ishaq said: 'Abd al-Samad—that is, Ibn 'Abd al-Warith al-Tannuri—related to us: Hammam related to us. Ahmad said: Hibban related to us: Aban related to us. They all said: Abu 'Imran al-Jawni related to us, from Jundab ibn 'Abd Allah al-Balkhi, from the Prophet ﷺ, that he said: "Recite the Quran so long as your hearts are in accord concerning it; when you disagree, get up." Through the same chain to Muslim: Zuhayr ibn Harb related to me: Jarir related to us, from Suhayl ibn Abi Salih, from his father, from Abu Hurayrah, who said: The Messenger of Allah ﷺ said: "Allah Most High approves three things for you and dislikes three things for you. He approves that you worship Him and

نا أحمد بن فتح، ثنا عبد الوهاب بن عيسى، نا أحمد بن محمد، نا أحمد بن علي، نا مسلم، نا عبيد الله بن معاذ، نا أبي، نا شعبة عن محمد بن زياد سمع أبا هريرة عن النبي صلى الله عليه وسلم قال ذروني ما تركتكم فإنما هلك الذين من قبلكم بكثرة مسائلهم واختلافهم على أنبيائهم. وبه إلى مسلم، نا يحيى بن يحيى، وإسحاق بن منصور، وأحمد بن سعيد بن صخر الدارمي قال يحيى: أنا أبو قدامة الحارث بن عبيد، وقال إسحاق: نا عبد الصمد هو ابن عبد الوارث التنوري، ثنا همام، وقال أحمد: نا حبان، نا أبان، قالوا كلهم: نا أبو عمران الجوني عن جندب بن عبد الله البلخي عن النبي صلى الله عليه وسلم أنه قال اقرؤوا القرآن ما ائتلفت عليه قلوبكم فإذا اختلفتم فقوموا. وبه إلى مسلم، حدثني زهير بن حرب، نا جرير عن سهيل بن أبي صالح عن أبيه عن أبي هريرة قال قال رسول الله صلى الله عليه وسلم إن الله تعالى يرضى لكم ثلاثا ويكره لكم ثلاثا، فيرضى لكم أن تعبدوه ولا تشركوا به شيئا وأن تعتصموا بحبل الله جميعا ولا تفرقوا، ويكره لكم قيل وقال وكثرة السؤال وإضاعة المال. قال أبو محمد: ففي بعض ما ذكرنا كفاية، لأن الله تعالى نص على أن الاختلاف شقاق، وأنه بغي ونهى عن التنازع والتفرق في الدين، وأوعد على الاختلاف بالعذاب العظيم، وبذهاب الريح، وأخبر أن الاختلاف تفريق عن سبيل الله، ومن عاج عن سبيل الله تعالى فقد وقع في سبيل الشيطان قال تعالى {لا إكراه في لدين قد تبين لرشد من لغي فمن يكفر بلطاغوت ويؤمن بلله فقد ستمسك بلعروة لوثقى لا نفصام لها ولله سميع عليم}

associate nothing with Him, and that you all hold fast to the rope of Allah and do not become divided. He dislikes for you hearsay and gossip, excessive questioning, and wasting wealth." Abu Muhammed said: Some of what we have mentioned is sufficient, for Allah Most High has expressly stated that disagreement is discord and that it is wrongful aggression. He has forbidden contention and division in religion, threatened disagreement with tremendous punishment and the loss of strength, and declared that disagreement is a departure into divisions away from the path of Allah. Whoever turns aside from the path of Allah Most High has fallen into the path of Satan. He Most High said: "There is no compulsion in religion. Right guidance has become distinct from error. Whoever rejects false objects of worship and believes in Allah has grasped the firmest handhold, which cannot break. Allah is All-Hearing, All-Knowing."[5][6][7][8][9][10]

L2013 He Most High has expressly stated that disagreement is not from Him. This means that He Most High does not approve of it; He Most High willed it

وقد نص تعالى على أن الاختلاف ليس من عنده، ومعنى ذلك أنه تعالى لم يرض به، وإنما أراده تعالى إرادة كون، كما أراد كون الكفر وسائر المعاصي. فإن قال قائل: إن الصحابة قد اختلفوا وأفاضل الناس، أفيلحقهم هذا الذم؟ قيل له، وبالله تعالى التوفيق: كلا، ما يلحق أولئك شيء من هذا، لأن كل امرىء منهم تحرى سبيل الله ووجهة الحق، فالمخطىء منهم مأجور أجرا واحدا لنيته الجميلة في إرادة الخير، وقد رفع عنهم الإثم في خطئهم لأنهم لم يتعمدوه ولا قصدوه ولا استهانوا بطلبهم

[5] **Translator's note (L2008):** The quotation of 3:103 repeats the verse already quoted in the preceding unit; the repetition is retained. The other Quranic quotations correspond to 3:105, 8:46, and the beginning of 42:13. The final quotation continues in the next unit.

[6] **Translator's note (L2009):** The Quranic passages are the continuation of 42:13, followed by 6:153, 6:159, and 4:82. The chain gives the name "Ahmad ibn Zayd," which is retained as supplied; it appears to be a transcription error for Hammad ibn Zayd. The expression rendered "wrote to me" is transcribed with a preposition normally meaning "to," rather than the expected form meaning "to me." Read literally, it would make Abd Allah ibn Rabah the recipient and leave the writer unnamed; the translation follows the apparent intended construction and flags the irregularity here. The verb rendered "went early" can refer specifically to going in the midday heat.

[7] **Translator's note (L2011):** The opening completes the report begun in the preceding segment. The source gives the transmitter's designation as al-Balkhi; the familiar designation in this report is al-Bajali. The supplied reading is retained. The designation al-Tannuri is retained as supplied; its attachment within the transmitter's name is uncertain.

[8] **Translator's note (L2012):** The Quranic transcription repeatedly omits initial alifs and other orthographic elements. The intended words are recognizable, and their meanings are translated without reproducing those spelling defects.

[9] **Hadith references (L2008):** Riyad as-Salihin 1781.

[10] **Qur'an references (L2008):** Qur'an 3:103 (Ali 'Imran); Qur'an 8:46 (Al-Anfal); Qur'an 42:13 (Ash-Shuraa); Qur'an 6:153 (Al-An'am); Qur'an 6:159 (Al-An'am); Qur'an 4:82 (An-Nisa).

only with a will that it come into existence, just as He willed the existence of unbelief and all other acts of disobedience. If someone says, “The Companions and the most excellent people disagreed; does this censure therefore apply to them?” he is told—and through Allah Most High comes success: Certainly not. None of this applies to those people, because each of them sought the path of Allah and the direction of truth. The one among them who erred receives one reward for his good intention in desiring what is good. Sin has been lifted from them concerning their error, because they neither committed it deliberately nor intended it, nor were they careless in their seeking.

L2014–2020 The one among them who is correct receives two rewards. The same applies to every Muslim until the Day of Resurrection concerning matters of religion that have remained hidden from him and have not reached him. The aforementioned censure and the described threat apply only to someone who abandons holding fast to the rope of Allah Most High—which is the Quran and the words of the Prophet ﷺ—after the text has reached him and the proof furnished by it has been established against him, and instead attaches himself to so-and-so and so-and-so, following their authority without evidence, deliberately pursuing disagreement, calling for factional partisanship and the fierce chauvinism of the Age of Ignorance, intending division, and seeking to uphold his claim by referring the Quran and the Sunnah back to it. If the text agrees with his claim, he accepts it; if it contradicts his claim, he clings to his ignorance and abandons the Quran and the words of the Prophet ﷺ. These are the censured dissenters. There is another class: people whose weakness in religion and lack of reverent fear have led them to seek whatever accords with their desires in the statements of every speaker. They take whatever constitutes a concession from the statement of every scholar, following his authority without evidence, without seeking what the text from Allah Most High and His Messenger ﷺ makes obligatory. If someone says, “Since encountering disagreement is unavoidable, how can one escape this censure pronounced upon those who disagree?” he is told—and through Allah Most High comes success: Allah Most High has taught us the way in this and has not left us in confusion; to Him belongs praise.

والمصيب مأجور منهم أجرين. وهكذا كل مسلم إلى يوم القيامة فيما خفي عليه من الدين ولم يبلغه، وإنما الذم المذكور والوعيد الموصوف، لمن ترك التعلق بحبل الله تعالى الذي هو القرآن وكلام النبي صلى الله عليه وسلم بعد بلوغ النص إليه وقيام الحجة به عليه وتعلق بفلان وفلان مقلدا عامدا للاختلاف، داعيا إلى عصبية وحمية الجاهلية، قاصدا للفرقة، متحريا في دعواه برد القرآن والسنة إليها، فإن وافقها النص أخذ به، وإن خالفها تعلق بجاهليته وترك القرآن وكلام النبي صلى الله عليه وسلم فهؤلاء هم المختلفون المذمومون وطبقة أخرى وهم قوم بلغت بهم رقة الدين، وقلة التقوى، إلى طلب ما وافق أهواءهم في قول كل قائل، فهم يأخذون ما كان رخصة من قول كل عالم، مقلدين له غير طالبين ما أوجبه النص عن الله تعالى وعن رسوله صلى الله عليه وسلم فإن قال قائل فإذ لا بد من مواقعة الاختلاف فكيف التخلص من هذا الذم الوارد في المختلفين، قيل له، وبالله تعالى التوفيق: قد علمنا الله تعالى الطريق في ذلك، ولم يدعنا في لبس وله الحمد فقال تعالى {وأن هذا صراطي مستقيما فتبعوه ولا تتبعوا لسبل فتفرق بكم عن سبيله ذلكم وصاكم به لعلكم تتقون} وقال تعالى {وعتصموا بحبل لله جميعا ولا تفرقوا وذكروا نعمة لله عليكم إذ كنتم أعدآء فألف بين قلوبكم فأصبحتم بنعمته إخوانا وكنتم على شفا حفرة من لنار فأنقذكم منها كذلك يبين لله لكم آياته لعلكم

He Most High said: “And this is My path, straight, so follow it, and do not follow the paths, lest they separate you from His path. This He has enjoined upon you, so that you may be reverently fearful.” And He Most High said: “And hold fast to the rope of Allah, all together, and do not become divided. Remember Allah’s favor upon you, when you were enemies and He brought your hearts together, so that through His favor you became brothers. You were on the brink of a pit of fire, and He rescued you from it. Thus Allah makes His signs clear to you, so that you may be guided.” And He Most High said: “O you who believe, obey Allah and obey the Messenger and those vested with authority among you. If you dispute over anything, refer it back to Allah and the Messenger, if you believe in Allah and the Last Day. That is better and finer in its outcome.” When statements are presented, follow the words of Allah Most High and the words of His Prophet ﷺ, which explain what Allah Most High has commanded us, and whatever all Muslims have unanimously agreed upon. This is the path of Allah Most High and His rope: if you hold fast to it, it will bring you out of censured division and reprehensible disagreement, if you believe in Allah and the Last Day, as Allah Most High has said. This is what all the people of Islam, ancient and modern, have unanimously agreed upon, for there has never been a Muslim whose conviction and profession did not include that accepting the words of Allah Most High and the words of His Messenger, peace be upon him, is obligatory, and that no one may oppose them with any such thing or contradict them. There remain all the other statements derived from following the authority of so-and-so and so-and-so without evidence, from analogy, and from juristic preference. These constitute the censured disagreement that it is unlawful to follow. Whoever abandons them has abandoned disagreement. The adherents of all those statements are commanded to abandon them and return to the rope of Allah Most High and His path. When they abandon them, they have abandoned disagreement and division and returned to the binding agreement incumbent upon them. For this reason we hold that every judge’s judgment rendered contrary to the text must be annulled, whether groups of scholars have endorsed it or not. Allah, Mighty and Majestic, said: “Had your Lord willed, He would have made humankind one community; but they will continue to disagree, except those upon whom your Lord has

تهتدون} وقال تعالى {يا أيها لذين آمنوا أطيعوا لله وأطيعوا لرسول وأولي لأمر منكم فإن تنازعتم في شيء فردوه إلى لله ولرسول إن كنتم تؤمنون بلله وليوم لآخر ذلك خير وأحسن تأويلا} فإذا وردت الأقوال فاتبع كلام الله تعالى وكلام نبيه صلى الله عليه وسلم الذي هو بيان عما أمرنا الله تعالى به وما أجمع عليه جميع المسلمين، فهذا هو صراط الله تعالى وحبله الذي إذا تمسكت به أخرجك من الفرقة المذمومة ومن الاختلاف المكروه إن كنت تؤمن بالله واليوم الآخر كما قال الله تعالى، وهذا هو الذي أجمع عليه جميع أهل الإسلام قديما وحديثا، فإن لم يكن قط مسلم إلا ومن عقده وقوله: إن كلام الله تعالى وكلام رسوله عليه السلام فرض قبوله، وأنه لا يحل لأحد معارضته بشيء من ذلك ولا مخالفته، وبقيت سائر الأقوال المأخوذة من تقليد فلان وفلان، ومن القياس، ومن الاستحسان، وهي الاختلاف المذموم الذي لا يحل اتباعه، فمن تركها فقد ترك الاختلاف، وأصحاب أولئك الأقوال كلها مأمورون بتركها والرجوع إلى حبل الله تعالى وصراطه، فإذا تركوها فقد تركوا الاختلاف والفرقة، ورجعوا إلى الفرض عليهم من الاتفاق اللازم، ولهذا قلنا بفسخ قضاء كل قاضي قضى به بخلاف النص، وسواء قال به طوائف من العلماء أو لا قال الله عز وجل {ولو شآء ربك لجعل لناس أمة واحدة ولا يزالون مختلفين * إلا من رحم ربك ولذلك خلقهم وتمت كلمة ربك لأملأن جهنم من لجنة ولناس أجمعين} فاستثنى تعالى من رحم من جملة المختلفين، وأخرج المرحومين من جملة المختلفين وعديدهم، ومن ظن أن قوله تعالى: {إلا من رحم ربك ولذلك خلقهم وتمت كلمة ربك لأملأن جهنم من لجنة ولناس أجمعين} أنه يعني وللرحمة خلقهم وأرادوا بذلك استباحة الاختلاف، فهو في غاية الفساد ببرهانين ضروريين. أحدهما: أن الله تعالى استثنى من رحم فأخرجهم من جملة المختلفين، فلو أنه تعالى خلق المختلفين للرحمة لاستثنى المرحومين من أنفسهم،

mercy. For that He created them. Your Lord's word has been fulfilled: 'I shall surely fill Hell with jinn and humankind, all together.'" He Most High thus excepted those upon whom He has mercy from the totality of those who disagree, and excluded the recipients of mercy from the totality and number of those who disagree. Whoever supposes that His words, Most High—"except those upon whom your Lord has mercy. For that He created them. Your Lord's word has been fulfilled: 'I shall surely fill Hell with jinn and humankind, all together'"—mean that He created them for mercy, intending thereby to declare disagreement permissible, holds an utterly unsound position, as shown by two necessary demonstrations. The first is that Allah Most High excepted those upon whom He has mercy, excluding them from the totality of those who disagree. Had He Most High created those who disagree for mercy, He would have excepted the recipients of mercy from themselves and excluded them from their own totality. This is false, inadmissible, and an impossibility in speech that cannot be understood. The second demonstration is that those who disagree exist, and every existent is in some state. No Muslim doubts that He Most High created it precisely to be in that state. It is therefore established with certainty, without any doubt, that it was the disagreement visibly characterizing them [for which] He created them—unless someone says that the pronoun in "He created them," namely the letters ha and mim, refers back to those upon whom He has mercy, in which case the intended meaning would be to except the recipients of mercy from the totality of those who disagree, and that those who held fast to the rope of Allah Most High [were created] for mercy. This is correct, without doubt, while the censure of disagreement and its exclusion from mercy remain in force as before. Among those of the righteous predecessors who expressed this view were 'Umar ibn 'Abd al-'Aziz and Malik ibn Anas, as was written to al-Muhallab, from Ibn Munas, from Ibn Masrur, from Yunus ibn 'Abd al-A'la: Ibn Wahb informed me: 'Abd Allah ibn Yazid informed me, from al-Mas'udi, who said: I heard 'Umar ibn 'Abd al-'Aziz recite this verse: "Had your Lord willed, He would have made humankind one community; but they will continue to disagree, except those upon whom your Lord has mercy. For that He created them. Your Lord's word has been fulfilled: 'I shall surely fill Hell with jinn and humankind, all together.'" He said: "He created the people of

ولأخرجهم من جملة أنفسهم، وهذا باطل لا يجوز ومحال في الكلام لا يفهم. والبرهان الثاني: أن المختلفين موجودون، وكل موجود عن حالة ما، فلا شك عند كل مسلم أنه تعالى إنما خلقه ليكون على تلك الحالة، وصح يقينا بلا مرية أنه الاختلاف الذي هم عليه بالعيان خلقهم، إلا أن يقول قائل: إن الضمير الذي في خلقهم وهو الهاء والميم راجع إلى من رحم، فيكون المراد حينئذ استثناء المرحومين من جملة المختلفين، وأن أولئك الذين اعتصموا بحبل الله تعالى للرحمة فهذا صحيح لا شك فيه، وذم الاختلاف وخروجه من الرحمة باق بحسبه، وممن قال بهذا من السلف الصالح عمر بن عبد العزيز، ومالك بن أنس، كما كتب إلى المهلب، عن ابن مناس، عن ابن مسرور، عن يونس بن عبد الأعلى، أخبرني ابن وهب، أخبرني عبد الله بن يزيد، عن المسعودي قال: سمعت عمر بن عبد العزيز قرأ هذه الآية {ولو شآء ربك لجعل لناس أمة واحدة ولا يزالون مختلفين * إلا من رحم ربك ولذلك خلقهم وتمت كلمة ربك لأملأن جهنم من لجنة ولناس أجمعين} قال خلق أهل رحمته ألا يختلفوا، قال ابن وهب: وسمعت مالكا يقول فيها: الذين رحمهم الله لم يختلفوا. قال أبو محمد: معنى قولنا الاختلاف في الدين غير جائز، إنما هو أن طاعة أمر الله تعالى وأمر رسوله صلى الله عليه وسلم لا يجوز خلافها البتة وليس فيما جاء من عند الله تعالى على لسان رسوله صلى الله عليه وسلم تخالف إنما هو محكم أو خاص من جملة مخصوصة منها، أو ناسخ ومنسوخ فقط، وإذ لا حق إلا فيما جاء من عند الله على لسان رسول الله صلى الله عليه وسلم فخلاف الحق لا يحل هذا أمر لا يخفى صوابه على أحد، كما أن الثلاثة أكثر من الاثنين وبالله تعالى التوفيق

His mercy so that they would not disagree." Ibn Wahb said: I also heard Malik say concerning it: "Those upon whom Allah has mercy did not disagree." Abu Muhammed said: What we mean when we say that disagreement in religion is impermissible is simply that obedience to the command of Allah Most High and the command of His Messenger ﷺ may never be contravened. There is no contradiction in what has come from Allah Most High through the tongue of His Messenger ﷺ. It consists only of provisions of established applicability, or a specific provision drawn from a broader body of provisions from which it is singled out, or an abrogating provision and an abrogated provision. Since there is no truth except in what has come from Allah through the tongue of the Messenger of Allah ﷺ, opposing the truth

is unlawful. The correctness of this is hidden from no one, just as three is greater than two. Through Allah Most High comes success.[11][12][13][14][15][16][17][18]

[11] **Translator's note (L2014):** The wording concerning referring the Quran and Sunnah back to one's claim is syntactically compressed; it is translated as making the prior claim the standard against which the texts are judged. The Quranic transcription contains recurrent omissions of initial alifs; the recognizable wording is translated accordingly.

[12] **Translator's note (L2015):** The opening continues the Quranic quotation begun in the preceding segment. The Quranic transcription has recurrent omissions of initial alifs.

[13] **Translator's note (L2016):** The phrase 'with any such thing' translates an unclear backward reference in the supplied wording; no more specific referent has been inserted.

[14] **Translator's note (L2017):** The supplied phrase translated 'every existent is in some state' uses an awkward preposition, literally 'from some state'; the intended relationship is uncertain. The words '[for which]' make explicit the apparent intended connection in a grammatically defective clause. The supplied text lacks the expected preposition before 'disagreement.' The Quranic transcription contains recurrent omissions of initial alifs. The repetition of the extended quotation is retained.

[15] **Translator's note (L2018):** The words '[were created]' supply an apparent ellipsis in the Arabic phrase concerning those who held fast to Allah's rope.

[16] **Translator's note (L2019):** The supplied wording says 'to al-Muhallab.' It may be a transcription of 'al-Muhallab wrote to me,' but that reading has not been silently substituted. The Quranic transcription contains recurrent omissions of initial alifs.

[17] **Translator's note (L2020):** The phrase concerning a specific provision and the broader body from which it is singled out is awkward in the supplied Arabic. The translation retains that relationship without replacing the wording with a standard formulation about general and specific texts. The technical term rendered 'provisions of established applicability' is muhkam, here contrasted with specification and abrogation.

[18] **Qur'an references (L2014):** Qur'an 6:153 (Al-An'am); Qur'an 3:103 (Ali 'Imran); Qur'an 4:59 (An-Nisa); Qur'an 11:118 (Hud); Qur'an 11:119 (Hud).



الباب 26: الحق واختلاف الأقوال

Chapter 26: Truth and Conflicting Positions

Ibn Ḥazm · Arabic–English parallel edition

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[Chapter Twenty-Six: On the Truth Being in One Position and All Other Statements Being False]

Abu Muhammed Ali ibn Ahmad said: A group has held that every practitioner of independent legal reasoning is correct, and that every issuer of a legal opinion is right in his opinion, despite their mutual contradiction. They adduced what is reported from Uthman, may Allah be pleased with him, when he was asked about combining two sisters through ownership by the right hand. He said: "One verse has made the two lawful, and another verse has made the two unlawful." Abu Muhammed said: This provides them with no proof, for several reasons. First, acceptance of a statement by Uthman, or by anyone other than the Prophet ﷺ, is not obligatory unless it accords with a text of the Quran, a prophetic practice supporting it, or a consensus. Second, all the demonstrations that will follow, Allah Almighty willing, establishing that the truth lies in one position invalidate their corrupt interpretation. These are very numerous proofs. Third, Uthman did not mean what they have maintained: that a thing is simultaneously unlawful and lawful, at one time, for one person. That is the utmost impossibility and inconceivability. He meant only that no ruling on the matter had become clear to him upon which he could settle, because he had seen His words, Exalted is He: {Except with their spouses or what their right hands possess, for then they are not blameworthy}, and had seen His words, Exalted is He: {Forbidden to you are your mothers, your daughters, your sisters, your paternal aunts, your maternal aunts, brothers' daughters, sisters' daughters, your mothers who nursed you, your sisters through nursing, your wives' mothers, and your stepdaughters who are in your care, born of your wives with whom you have consummated marriage—but if you have not consummated marriage with them, there is no blame upon you—and the wives of your sons who are from your own loins, and that you combine two sisters, except what has already passed. Indeed, Allah is forgiving, merciful.} It had not become clear to him which of the two provisions prevailed. He therefore reported that the apparent meaning of one verse could possibly make the two lawful, as an exception to the other, and that the apparent meaning of the second

[الباب السادس والعشرون في أن الحق في واحد وسائر الأقوال كلها باطل]

قال أبو محمد علي بن أحمد ذهبت طائفة إلى أن كل مجتهد مصيب، وأن كل مفت محق في فتياه على تضاده، واحتجوا بما روي عن عثمان رضي الله عنه إذ سئل عن الجمع بين الأختين بملك اليمين فقال: أحلتهما آية وحرمتهما آية. قال أبو محمد: ولا حجة لهم في ذلك لوجوه: أحدها أن قول عثمان وقول كل أحد دون النبي صلى الله عليه وسلم لا يلزم قبوله إلا بموافقة نص قرآن أو سنة له أو إجماع. والثاني: أن كل ما يأتي بعد هذا إن شاء الله عز وجل من البراهين في إثبات أن الحق في واحد مبطل لتأويلهم الفاسد، وهي دلائل كثيرة جمة. والثالث: أن عثمان لم يرد ما ذهبوا إليه من كون الشيء حراما حلالا معا في وقت واحد، على إنسان واحد، فهذا غاية المحال الممتنع، وإنما أراد أنه لم يلح له فيها حكم يقف عليه، لأنه رأى قوله تعالى: {إلا على أزواجهم أو ما ملكت أيمانهم فإنهم غير ملومين} ورأى قوله تعالى: {حرمت عليكم أمهاتكم وبناتكم وأخواتكم وعماتكم وخالاتكم وبنات لأخ وبنات لأخت وأمهاتكم اللاتي أرضعنكم وأخواتكم من لرضاعة وأمهات نسائكم وربائبكم اللاتي في حجوركم من نسائكم اللاتي دخلتم بهن فإن لم تكونوا دخلتم بهن فلا جناح عليكم وحلائل أبنائكم لذين من أصلابكم وأن تجمعوا بين لاختين إلا ما قد سلف إن لله كان غفورا رحيما} فلم يبن له أي الأمرين تغلب، فأخبر عن ظاهر الآية الواحدة أنها قد تحتمل أن تكون محللة لهما مخصوصة من الأخرى، وأن ظاهر الثانية قد يحتمل أن يكون محرما لهما، مخصصا من الأخرى فوقف في ذلك، واحتجوا بقوله عليه السلام: إذا اجتهد الحاكم فأخطأ فله أجر. قال أبو محمد: وهذا من طريق ما احتج به من لا يعقل ولا يحل له الكلام في العلم لأن نص الحديث بكلامه صلى الله عليه وسلم أن المجتهد يخطىء وإذا

could possibly make the two unlawful, as a restriction upon the other. He consequently suspended judgment on this.

They adduced his saying, peace be upon him: "When a judge exercises independent legal reasoning and errs, he receives a reward." Abu Muhammed said: This is the sort of argument advanced by someone who does not understand and who is not permitted to speak on matters of knowledge. For the explicit text of the report, in his own words ﷺ, is that the practitioner of independent legal reasoning errs. When he errs, that is our position, not theirs. He is not rewarded for his error, and it is not lawful to adopt error. Rather, he is rewarded for his exercise of independent legal reasoning, which is right, because it is a search for the truth. A person's speaking on the basis of his own opinion is not independent legal reasoning. As for his error, he is not rewarded for it, but liability for sin is lifted from him, by His words, Exalted is He: {Call them after their fathers; that is more equitable with Allah. But if you do not know their fathers, then they are your brothers in religion and your clients. There is no blame upon you for what you do mistakenly, but for what your hearts deliberately intend. And Allah is forgiving, merciful.}

They adduced the correctness of differing Quranic readings, and the permissible alternatives in expiations, arguing that all of them are right despite their differences. Abu Muhammed said: This provides them with no proof, because the different readings are not mutually incompatible. We have not denied correctness in things that are not mutually incompatible, nor in what He, Exalted is He, has commanded. We have denied only that someone's statement, "The flesh of a predatory beast is lawful for someone who is not compelled by necessity," should be true, and that someone's statement, "The flesh of a predatory beast is unlawful for someone who is not compelled by necessity," should also be true. A thing would thereby be unlawful and lawful, obedience and disobedience, commanded and forbidden, at one time, for one person, in one respect. This is what we have denied and invalidated. This cannot be accommodated by the intellect of anyone possessing the least measure of reason, because it is the utmost impossibility, which cannot be conceived in the mind, let alone allowed in practice. The differences in

أخطأ فهذا قولنا لا قولهم، وليس مأجورا على خطأه، والخطأ لا يحل الأخذ به، ولكنه مأجور على اجتهاده الذي هو حق، لأنه طلب للحق، وليس قول القائل برأيه اجتهادا، وأما خطأه فليس مأجورا عليه لكنه مرفوع في الإثم بقوله تعالى {دعوهم لآبآئهم هو أقسط عند الله فإن لم تعلموا آباءهم فإخوانكم في لدين ومواليكم وليس عليكم جناح فيمآ أخطأتم به ولكن ما تعمدت قلوبكم وكان الله غفورا رحيما} واحتجوا بالصواب في اختلاف القراءات وبالأشياء المباحات في الكفارات، وأنها كلها حق على اختلافها. قال أبو محمد: وهذا لا حجة لهم فيه، لأن القراءات المختلفة ليست متنافية، ونحن لم ننكر الصواب فيما لا يتنافى ولا فيما أمر به تعالى، وإنما أنكرنا أن يكون قول القائل لحم السبع على غير المضطر حلال حقا، ويكون قال القائل لحم السبع على غير المضطر حرام حقا، فيكون الشيء حراما حلالا، طاعة معصية، مأمورا به منهيا عنه في وقت واحد، لإنسان واحد، من وجه واحد، فهذا الذي نفينا وأبطلنا، وهذا لا يسع في عقل من له مسكة من عقل، لأنه غاية الامتناع الذي لا يتشكل في النفس فضلا عن أن يطلق استعماله. واختلاف القراءات التي ذكروا مثل {بسم الله لرحمن لرحيم} يقرأ بها بعض القراء في أوائل السور، ويسقطها بعضهم، فكل ذلك مباح، من أسقطها فقد أبيح له، ومن قرأها فقد أبيح له، وكذلك المخبر في كفارة الأيمان هي العتق والإطعام والكسوة، فليس شيء من ذلك متنافيا، وأيها فعل المرء فقد فعل ما أبيح له، ولم يقل أحد إنه لو فعل الوجه الذي ترك لكان مخطئا، وهذا غير ما اختلفنا فيه، لأنه قد تكون أشياء كثيرة مباحة، وغير ممكن أن يكون شيء واجبا تركه، وواجبا فعله على إنسان واحد في وقت واحد، وهذا فرق لا يشكل إلا على جاهل واحتجوا أيضا بأن قالوا قد روي أن النبي صلى الله عليه وسلم أمر أثر غزوة الخندق ألا يصلي أحد العصر إلا في بني قريظة فصلى قوم العصر إذ دخل وقتها قبل أن يبلغوا بني قريظة، وقالوا: لم يرد منا هذا، وأخرها آخرون حتى صلوها في بني

readings that they mentioned include, for example, {In the name of Allah, the Merciful, the Compassionate}, which some reciters recite at the beginnings of the surahs and others omit. All of that is permissible: whoever omits it has been permitted to do so, and whoever recites it has been permitted to do so. Likewise, the informant concerning the expiation of oaths: it consists of manumission and feeding and clothing. None of these is mutually incompatible with the others. Whichever of them a person does, he has done what was permitted to him. No one has said that, had he performed the alternative he left aside, he would have been mistaken. This differs from the matter over which we disagree, because many things may be permissible, whereas it is impossible for the same person, at the same time, to be obligated both to refrain from a thing and to do it. This distinction is obscure only to an ignorant person.

They also argued by saying: It has been reported that, following the Battle of the Trench, the Prophet ﷺ commanded that no one should perform the afternoon prayer except among Banu Qurayzah. Some people performed the afternoon prayer when its time began, before reaching Banu Qurayzah, saying: "He did not intend this of us." Others delayed it until they performed it among Banu Qurayzah at night. This reached the Prophet ﷺ, and he did not rebuke either group. Abu Muhammed said: This provides them with no proof, because a practitioner of independent legal reasoning who errs is not rebuked. The prayer of those who had performed it was something already past, so there was no reason to rebuke them. Yet correctness undoubtedly lay in the action of one of the two groups. Had we been with him, we would

قريظة مع الليل فبلغ ذلك النبي صلى الله عليه وسلم فلم يعنف إحدى الطائفتين قال أبو محمد وهذا لا حجة لهم فيه، لأن المجتهد المخطىء لا يعنف، وكانت صلاة من صلى أمرا قد فات فلا وجه لتعنيفهم، ولكن الصواب بلا شك في فعل إحدى الطائفتين، ولو كنا معه ما صلينا العصر إلا في بني قريظة معه ولو نصف الليل،

have performed the afternoon prayer only among Banu Qurayzah with him, even at midnight.[1][2][3]

L2028–2029

We have also discussed this report in the chapter discussing commands occurring in the Quran and the reports, and construing them according to their apparent meaning, as imposing obligation and requiring immediate performance, near the end of that chapter, before a section entitled “How Commands Occur.” Al-Nabati related to us; Ibn Awn Allah related to us; Qasim ibn Asbagh related to us; al-Khushani related to us; Bundar related to us; Ibn Abi Adi related to us; Shubah related to us, from Tariq ibn Abd Allah, from Tariq ibn Shihab, who said: A man came to the Prophet ﷺ and said: “I entered a state of major ritual impurity, so I did not pray.” He said: “You acted correctly.” Another man came to him and said: “I entered a state of major ritual impurity, so I performed dry ablution and prayed.” He said: “You acted correctly.” Abu Muhammed said: This is exactly like the first case, because every practitioner of independent legal reasoning is excused and rewarded. The first questioner undoubtedly had no knowledge of the command to perform dry ablution. The ruling for someone in this condition is that he should not pray at all while in a state of major ritual impurity until he purifies himself. The second knew about dry ablution and therefore fulfilled his obligation as he was required to do. The rulings applicable to the two differed; they were not the same. Each correctly followed the manner of acting required of him according to the extent of his knowledge. We have not denied this. We have denied only that a thing should be true and false in one respect at one time.

وقد ذكرنا أيضا الكلام في هذا الحديث في باب الكلام في الأوامر الواردة في القرآن والحديث، وحملها على ظاهرها وعلى الوجوب والفور في قرب آخر ذلك الباب قبل فصل ترجمته كيفية ورود الأوامر. حدثنا النباتي، نا ابن عون الله، نا قاسم بن أصبغ، ثنا الخشني، نا بندار، ثنا ابن أبي عدي، ثنا شعبة عن طارق بن عبد الله عن طارق بن شهاب قال جاء رجل إلى النبي صلى الله عليه وسلم قال إني أجنبت فلم أصل قال أصبت وأتاه رجل فقال: إني أجنبت فتيممت وصليت، فقال: أصبت. قال أبو محمد: وهذا كالأول سواء بسواء، لأن كل مجتهد معذور ومأجور، لأن الذي سأل أولا لم يكن عنده أمر التيمم بلا شك، ومن هذه صفته فحكمه ألا يصلي أصلا وهو جنب حتى يتطهر، والثاني كان عالما بالتيمم فأدى فرضه كما يلزمه، وكان حكمهما مختلفا لا متفقا، وكلاهما أصاب وجه العمل فيما عليه بقدر علمه، ولم ننكر هذا، إنما أنكرنا أن يكون الشيء حقا باطلا من وجه واحد في وقت واحد. وقالوا: إن كان مخالفكم مخطئا ففسقوه كما يفسق الخوارج. قال أبو محمد: فالجواب وبالله تعالى التوفيق: إننا لا نفسق الخوارج ولا غيرهم، ولكننا نقول: من قامت عليه الحجة بحديث لا معارض له، أو آية لا معارض لها، أو برهان ضروري فتمادى على قوله المخالف للحق، أو تناقض فاحتج في مكان مما لا يصح مثله في غير ذلك المكان، وبنى عليه ذلك فتمادى على قوله الفاسد في فتيا في شيء من الفقه، أو في اعتقاد فهو فاسق وكل ذلك سواء، وهذا ابن عباس يقول بتخليد القائل، فمن فسق القائلين بإنفاذ الوعيد فليبدأ بتفسيق ابن عباس، ومن فسق ابن عباس فهو والله الفاسق حقا، وابن عباس البر ابن البر، الفاضل ابن الفاضل، رضي الله عنهما واحتجوا بما روي عن النبي صلى الله عليه وسلم أصحابي كالنجوم

[1] **Translator’s note (L2023):** The Quranic quotations contain apparent transcription defects, including بنات لأخ, بنات لأخت, من لرضاعة, اللاتي, and إن لله. Their recoverable meanings are translated; the supplied Arabic has not been reproduced or silently replaced with a corrected quotation.

[2] **Translator’s note (L2025):** The Quranic text contains apparent transcription defects such as دعوهم for the opening command, عند لله, and لدين في; the recoverable wording is translated. المخبر literally means “the informant,” as translated. The context appears to call for المخير, “the person given a choice,” but that reading has not been silently substituted.

[3] **Qur’an references (L2022):** Qur’an 23:6 (Al-Mu’minun); Qur’an 70:30 (Al-Ma’arij); Qur’an 4:23 (An-Nisa); Qur’an 33:5 (Al-Ahzab).

They said: "If your opponent is mistaken, declare him morally transgressive, as the Kharijites are declared morally transgressive." Abu Muhammed said: The answer—and success comes through Allah, Exalted is He—is that we do not declare the Kharijites or others morally transgressive. Rather, we say: Anyone against whom proof has been established by a report that has no countervailing evidence, a verse that has no countervailing evidence, or a necessary demonstration, and who nevertheless persists in his position contrary to the truth; or who contradicts himself, adducing in one place something the like of which is not valid elsewhere, building upon it, and then persisting in his corrupt position, whether in a legal opinion on some matter of jurisprudence or in a belief—such a person is morally transgressive. All of this is alike. Here is Ibn Abbas maintaining that the speaker will remain eternally. Whoever declares those who maintain the execution of the threatened punishment morally transgressive should begin by declaring Ibn Abbas morally transgressive. Whoever declares Ibn Abbas morally transgressive is, by Allah, himself truly morally transgressive. Ibn Abbas is the righteous son of a righteous man, the virtuous son of a virtuous man; may Allah be pleased with them both.

They adduced what is reported from the Prophet ﷺ: "My Companions are like the stars."[4]

L2030–2037 Abu Muhammed said: We have already invalidated this report and explained that it is a falsehood in the chapter condemning disagreement in this book of ours, which makes repeating it unnecessary. They adduced the disagreements among the Companions, and the fact that they did not overturn one another's judgments or prevent their opponents from ruling contrary to them. Abu Muhammed said: This provides them with no proof, because they did indeed censure one another's disagreements in legal opinions, just as they censured

[4]**Translator's note (L2029):** The supplied text reads بتخليد القائل, "that the speaker will remain eternally." The surrounding discussion, including the following context, strongly suggests القاتل, "the killer," with eternal punishment intended. The supplied reading is retained. The phrasing فاحتج في مكان مما لا يصح مثله في غير ذلك المكان وبنى عليه ذلك is syntactically awkward; the translation preserves its argument about inconsistent use of evidence.

قال أبو محمد وقد تقدم إبطالنا لهذا الحديث، وبينا أنه كذب في باب ذم الاختلاف من كتابنا هذا فأغنى عن ترداده. واحتجوا باختلاف الصحابة، وأنهم لم ينقض بعضهم أحكام بعض ولا منعوا مخالفهم من الحكم بخلافهم. قال أبو محمد: وهذا لا حجة لهم فيه، لأنهم قد أنكر بعضهم على بعض الاختلاف في الفتيا كإنكارهم غير ذلك، وقد قال ابن عباس: من شاء باهلته عند الحجر الأسود في العول في الفرائض، وفي تخليد القاتل. وقال: أما تخافون أن يخسف الله بكم الأرض أقول لكم قال رسول الله صلى الله عليه وسلم وتقولون قال أبو بكر وعمر وقال ابن عباس أأنتم أعلم أم الله تعالى يقول {لذين آمنوا يقاتلون في سبيل لله ولذين كفروا يقاتلون في سبيل لطاغوت فقاتلوا أولياء

other things. Ibn Abbas said: “Whoever wishes, I will join him in invoking Allah’s curse upon the liar at the Black Stone concerning the proportional reduction of inheritance shares and the killer’s remaining eternally.” He also said: “Do you not fear that Allah will cause the earth to swallow you? I tell you, ‘The Messenger of Allah ﷺ said,’ and you say, ‘Abu Bakr and Umar said.’” Ibn Abbas said: “Do you know better, or does Allah? He, Exalted is He, says: {Those who believe fight in the way of Allah, and those who disbelieve fight in the way of the false deity. So fight the allies of Satan; indeed, Satan’s stratagem is weak.} Yet you say: ‘She receives half of what he leaves, even if he has a child.’” And here is Ibn Umar, when he instructed people to perform the pilgrimage with an intervening release from consecration and was told, “Your father forbade it,” saying: “Which is more deserving of being followed: the words of Allah or the words of ʿUmar?” Here is ʿImrān ibn al-Ḥuṣayn saying, concerning ʿUmar’s prohibition of combining the lesser pilgrimage with the pilgrimage: “The Qur’an was revealed concerning it, and we performed it with the Prophet ﷺ. A man said whatever he wished about it on the basis of his own opinion.” Here is Ibn al-Zubayr saying to Ibn ʿAbbās concerning temporary marriage with women: “If you do it, I shall certainly stone you. Try it, if you wish.” Here is ʿUmar annulling the sale of slave women who had borne their masters children, and returning them pregnant from Tustar; annulling Abū Bakr’s action in enslaving the women of the apostates; and beating people for performing the two units of prayer after the afternoon prayer, although Ṭalḥa, Abū Ayyūb, and ʿĀ’isha used to perform them. Abū Ayyūb and Abū Ṭalḥa concealed their performance of them throughout ʿUmar’s lifetime; when he died, they resumed them. When Ibn Masʿūd heard Abū Mūsā al-Ashʿarī’s legal opinion concerning a daughter, a daughter, and a sister’s son, after which he said of Ibn Masʿūd, “He will agree with me on this,” Ibn Masʿūd said: “Then I would indeed have gone astray, and I would not be among the rightly guided.” Thus he characterized giving an erroneous legal opinion as going astray and departing from guidance. There is more of this than could be encompassed except in a very large volume. Their appeal to these matters as evidence is therefore invalid. Through Allah Most High comes success.

لشيطان إن كيد لشيطان كان ضعيفا} فقلتم أنتم لها نصف ما ترك وإن كان له ولد، وهذا ابن عمر يقول إذ أمر بالمتعة في الحج، فقيل له: أبوك نهى عنها فقال: أيهما أولى أن يتبع، كلام الله أو كلام عمر؟. وهذا عمران بن الحصين يقول في نهي عمر عن المتعة في الحج نزل بها القرآن وعملناها مع النبي صلى الله عليه وسلم قال فيها رجل برأيه ما شاء وهذا ابن الزبير يقول لابن عباس في متعة النساء: لئن فعلتها لأرجمنك بحجر إن شئت. وهذا عمر قد فسخ بيع أمهات الأولاد وردهن حبالى من تستر، وفسخ فعل أبي بكر في استرقاق نساء المرتدين، وكان يضرب على الركعتين بعد العصر، وكان طلحة وأبو أيوب وعائشة يصلونهما، وتستر بها أبو أيوب وأبو طلحة مدة حياة عمر، فلما مات عاوداهما. وقال ابن مسعود إذ سمع فتيا أبي موسى الأشعري في ابنة وابنة وابن أخت، ثم قال عن ابن مسعود إنه سيوافقني في هذا، فقال ابن مسعود: لقد ضللت إذا وما أنا من المهتدين. فجعل الفتيا بالخطأ ضلالا وخلافا للهدى، وهذا أكثر من أن يحاط به إلا في سفر ضخم جدا، فبطل ما احتجوا به من ذلك، وبالله تعالى التوفيق. واحتجوا بقوله عليه السلام: إنكم تختصمون إلي وإنما أنا بشر، ولعل أحدكم أن يكون ألحن بحجته من الآخر فأقضي له على نحو ما سمع فمن قضيت له بشيء من حق أخيه فلا يأخذه، فإنما أقطع له قطعة من النار أو كما قال عليه السلام. قال أبو محمد: وهذا لا حجة لهم فيه بل هو حجة عليهم لأن النبي صلى الله عليه وسلم فعل ما أمر به من الحكم الظاهر من البينة أو اليمين، وأخبر الناس أن ذلك لا يحل حراما ولا يحرم حلالا، ولا يحيل شيئا عن وجهه، فلو كان حكم أحد من الحكام حقا وإن كل ما خالفه حقا لكان ذلك حكم النبي صلى الله عليه وسلم ولكان هذا بيان واضح في أن الحق في واحد وأن ما خالفه خطأ وحكم النبي صلى الله عليه وسلم في الظاهر بأن المال لزيد هو غير وجوب كون ذلك المال ملكا على الحقيقة لزيد،

They also appealed to his saying, peace be upon him: "You bring your disputes before me, and I am only a human being. Perhaps one of you is more eloquent in presenting his argument than the other, so I rule in his favor according to what is heard. Whoever is awarded by my judgment any part of his brother's right must not take it, for I am only cutting off a piece of the Fire for him"—or words to that effect, as he said, peace be upon him.

Abū Muḥammad said: This contains no evidence for them; rather, it is evidence against them. For the Prophet ﷺ did what he was commanded to do: adjudicate on the apparent evidence furnished by testimony or an oath. He informed people that this neither makes the unlawful lawful nor makes the lawful unlawful, nor changes anything from what it actually is. For if any judge's judgment were true, even though everything contrary to it were true, that would be the judgment of the Prophet ﷺ, and this would be a clear explanation that the truth lies in one position, and whatever contradicts it is error. The Prophet's ﷺ judgment, on the apparent evidence, that the property belongs to Zayd is distinct from that property's necessarily belonging to Zayd in actual fact. These are two different things. Since they are so, it is possible for one to be true and the other false. Their use of this as evidence for saying that the truth lies in two conflicting positions is therefore invalid. Rather, he has informed us, peace be upon him, that the truth remains the truth and that his judgment neither changes it from what it actually is nor makes the thing awarded by judgment lawful for anyone other than its owner. If they say, disputatiously, "When the Messenger of Allah ﷺ judged, on the apparent evidence, that someone should receive something which he forbade him to take in actual fact, did he judge according to truth or according to falsehood? If you say, 'According to falsehood,' you have disbelieved; and if you say, 'According to truth,' that is our position," we say to them—and through Allah Most High comes success: It is not lawful for a Muslim to suppose that the Prophet ﷺ judges according to falsehood while knowing it to be falsehood. Whoever allows this, or supposes it possible, is an unbeliever whose blood may lawfully be shed and whose property may lawfully be taken. Rather, the position is that whenever he ﷺ judged on the testimony of witnesses and an oath, he judged only according to a truth deci-

فهما شيئان متغايران. وإذا كانا كذلك فمن الممكن أن يكون أحدهما حقا والآخر باطلا، فبطل احتجاجهم بذلك في قول الحق في وجهين مختلفين، بل قد أخبر عليه السلام أن الحق حق، وأن حكمه لا يحيله عن وجهه، ولا يوجب إحلال المقضي به لغير صاحبه فإن قالوا مشاغبين أحكم رسول الله صلى الله عليه وسلم في ظاهر الأمر بما نهى عن أخذه في الباطن حكم بحق أو حكم بباطل، فإن قلتم بباطل كفرتم، وإن قلتم بحق فهو قولنا، قلنا لهم وبالله تعالى التوفيق لا يحل لمسلم أن يظن أن النبي صلى الله عليه وسلم يحكم بباطل وهو يعلم أنه باطل ومن أجاز هذا أو ظن جوازه فهو كافر حلال الدم والمال ولكن القول أنه صلى الله عليه وسلم ما حكم بشهادة الشهود واليمين إلا بحق مقطوع على أنه حق كما أمره الله عز وجل، وأمر المحكوم له بخلاف ما هو في باطنه حق بألا يأخذه. ثم نقول: إنه قد صح يقينا أنه عليه السلام يحكم بما هو عنده حق فيوافق خلاف ما أمر الله تعالى به وهذا لا يسمى باطلا، ومن سمى هذا باطلا فهو كافر وذلك نحو سلامه صلى الله عليه وسلم في الظهر أو العصر بالمدينة من ركعتين أو ثلاث، وإعراضه عن الأعمى فنزل في ذلك من القرآن ما نزل ورسول الله صلى الله عليه وسلم إنما قصد في كل ذلك ما هو حق عنده ولم يكن ذلك عند الله تعالى كذلك، فصح أن الحق في واحد ولا بد، فمن خالفه ناسيا أو هو يرى أنه حق، فليس آثما، ولكنه مأجور أجرا واحدا، ومن خالفه عامدا عالما فهو إما فاسق وإما كافر، إن كان خلافا للإسلام، وبالله تعالى التوفيق. ويسألون عن فقيهين، رأى أحدهما إباحة دم إنسان، ورأى الآخر تحريمه، ورأى أحدهما تارك الصلاة كافرا، ولم يره الآخر كافرا، ورأى أحدهما الساحر كافرا، ولم يره الآخر كافرا، فإن أطلقوا أن كل ذلك حق عند الله عز وجل لحقوا بالمجانين، وجعلوا إنسانا واحدا كافرا في جهنم مخلدا أبد الأبد، مؤمنا في الجنة مخلدا أبد الأبد، وهذا غاية الجنون، وليس هذا

sively known to be true, as Allah, Mighty and Majestic, commanded him. He commanded anyone awarded something contrary to what was true in actual fact not to take it.

We then say: It has been established with certainty that he, peace be upon him, judges according to what he regards as true, and this may turn out to be contrary to what Allah Most High commanded. This is not called falsehood, and whoever calls this falsehood is an unbeliever. Examples include his ﷺ pronouncing the concluding salutation in the noon or afternoon prayer in Medina after two or three units, and his turning away from the blind man, concerning which there was revealed of the Qur'an what was revealed. In all this, the Messenger of Allah ﷺ intended only what he regarded as right, although it was not so in the sight of Allah Most High. It is thus established that the truth must necessarily lie in one position. Whoever departs from it forgetfully, or while believing his position to be true, incurs no sin; rather, he receives one reward. Whoever departs from it deliberately and knowingly is either an evildoer or, if his departure is contrary to Islam, an unbeliever. Through Allah Most High comes success.

They are to be asked about two jurists, one of whom considers it lawful to shed a person's blood while the other considers it forbidden; one of whom considers someone who abandons prayer an unbeliever while the other does not consider him an unbeliever; and one of whom considers a sorcerer an unbeliever while the other does not consider him an unbeliever. If they assert without qualification that all of this is true in the sight of Allah, Mighty and Majestic, they have joined the ranks of the mad: they have made one and the same person an unbeliever abiding in Hell forever and ever, and a believer abiding in Paradise forever and ever. This is the utmost madness. This issue does not belong to the category of things we are commanded to give but which the recipient is forbidden to take. Those are two rulings concerning two different people, as when a beggar asks despite being wealthy, and the person asked gives to him: the giver does good and is rewarded, while the recipient is an evildoer, disobedient, and consuming illicit gain. The same applies to someone who ransoms a captive and someone who gives a bribe

الباب من نوع ما أمرنا بإعطائه وحرم على الآخذ أخذه، فهذان حكمان على إنسانين مختلفين، كسائل سأل وهو غني فأعطاه المسؤول، فالمعطي محسن مأجور، والآخذ فاسق عاص آكل سحتا، وكذلك فادي الأسير ومعطي الرشوة في دفع مظلمة وقد جاء النص بذلك في نهي النبي صلى الله عليه وسلم عن المسألة

to avert an injustice. An explicit text to this effect has been transmitted in the Prophet's ﷺ prohibition of begging.[5][6][7]

L2038–2041 They also said: "What do you say about someone who has performed four units of prayer but doubts whether he has performed three or four? You command him to continue praying until he is certain that he has performed four. You have therefore commanded him to perform a fifth unit, and thus you have commanded him to commit an error."

The answer—and through Allah Most High comes success—is that we have never commanded him to perform a fifth. We have commanded him only to perform four, no more. As for the fifth, which he added, he is undoubtedly in error concerning it in the sight of Allah, Mighty and Majestic. He was never commanded to perform it while knowing it to be a fifth; rather, he was certainly commanded to perform it when he did not know it was a fifth, and sin is lifted from him concerning it. We do not deny the lifting of culpability; we deny only the removal of error in actual fact. Had he not performed the fifth while uncertain that he had performed four, he would have invalidated his prayer because he had not performed the fifth which he was commanded to perform, and on account of his venturing to leave his prayer incomplete before becoming certain of its completion. These are two different things; error has overtaken whoever seeks to merge them.

وقالوا أيضا ما تقولون فيمن صلى أربعا وشك أصلى ثلاثا أم أربعا، فأنتم تأمرونه بأن يصلي حتى يكون على يقين من أنه صلى أربعا، فقد أمرتموه بركعة خامسة، فأنتم قد أمرتموه بالخطأ. فالجواب وبالله تعالى التوفيق: إننا لم نأمره قط بأن يصلي خامسة، وإنما أمرناه أن يصلي أربعا لا أكثر، والخامسة التي زاد فيها هو فيها مخطىء بلا شك عند الله عز وجل. وما أمر بها قط وهو يدري أنها خامسة، ولكن أمر بها يقينا إذا لم يدر أنها خامسة والإثم عنه مرفوع فيها، ولسنا ننكر رفع المأثم، وإنما ننكر رفع الخطأ في الباطن، فلو لم يصل الخامسة وهو غير موقن بأنه صلى أربعا لكان مفسدا لصلاته، لأنه لم يصل الخامسة التي أمر بصلاتها، ومن باب إقدامه على ترك إتمام صلاته قبل أن يوقن بتمامها، فهما شيئان متغايران دخل الغلط على من أراد مزجهما. وهكذا القول في الاجتهاد في القبلة إنما هو مأمور بمقابلة المسجد الحرام فقط، وغير مأمور بالصلاة إلى جهة غيرها، لكن الإثم عنه مرتفع إن وافق غيرها باجتهاده، وهو مخطىء وغير مأجور في ذلك، وإنما يؤجر على اجتهاده لا على ما أداه إليه الاجتهاد إلا أن يكون يؤديه إلى حق فحينئذ يؤجر أجرين أجرا على الطلب وأجرا على الإصابة، ولسنا نقول: إن كل مجتهد فهو مأمور بما أداه إليه اجتهاده بل هذا عين الخطأ، ولكنا نقول: كل مجتهد فهو مأمور بالاجتهاد وبإصابة الحق والاجتهاد فعل المجتهد وهو غير الشيء المطلوب، فإذا أمرنا بالطلب لا بالشيء الذي وجد ما لم يكن عين الحق، والاجتهاد كله حق وهو طلب الحق وإرادته، وإنما غلط من غلط، لأنه توهم أن الاجتهاد هو فعل المجتهد للشيء الذي أداه إليه اجتهاده فسقطوا سقوطا فاحشا وقال تعالى {وما كان لمؤمنون لينفروا كآفة فلولا نفر من كل فرقة منهم طآئفة ليتفقهوا في لدين ولينذروا قومهم إذا رجعوا إليهم لعلهم يحذرون} فأوجب تعالى التفقه وهو طلب الحقائق في واجبات

[5] **Translator's note (L2031):** The supplied Quranic quotation is the passage about fighting in the way of Allah and the false deity, corresponding to Quran 4:76. It does not address the inheritance issue in the surrounding argument and appears to be an erroneous quotation here; it has been translated as supplied. The pilgrimage practice is المتعة في الحج, performing the lesser pilgrimage followed by release from consecration before undertaking the greater pilgrimage.

[6] **Translator's note (L2032):** The inheritance case is transcribed as "a daughter, a daughter, and a sister's son." This apparently defective or erroneous wording has been retained without substituting a different set of heirs. In the quoted report, "according to what is heard" follows the supplied third-person wording, mā sami'a, rather than silently replacing it with the familiar first-person wording, "what I hear."

[7] **Translator's note (L2033):** The supplied wa-inna, "and indeed," produces an awkward connection in this conditional argument. The translation reads it concessively, "even though," while retaining the assertion that everything contrary to the judgment is true; the Arabic has not been silently amended to a negative.

The same applies to independent reasoning concerning the direction of prayer. He is commanded only to face the Sacred Mosque, and is not commanded to pray in another direction. But sin is lifted from him if, through his independent reasoning, he happens to face another direction. He is mistaken and receives no reward for that; he is rewarded only for his independent reasoning, not for the conclusion to which that reasoning led him, unless it leads him to the truth. Then he receives two rewards: a reward for seeking and a reward for arriving at the correct result. We do not say that everyone exercising independent reasoning is commanded to follow whatever his reasoning leads him to; rather, that is error itself. We say instead that everyone exercising independent reasoning is commanded to exercise it and to arrive at the truth. Independent reasoning is the act of the person exercising it, and is distinct from the thing sought. Thus we are commanded to seek, not to accept the thing found unless it is the very truth. Independent reasoning is entirely right: it consists in seeking the truth and intending it. Those who erred did so only because they imagined that independent reasoning consists in the reasoner's doing the thing to which his reasoning led him. Thus they fell into grievous error.

He Most High said: "It is not for the believers to go forth all together. Why, then, should a party from every group of them not go forth, so that they may acquire understanding in religion and warn their people when they return to them, so that they may beware?" Thus He Most High made the acquisition of understanding obligatory, which is the seeking of the truths concerning the obligations of the revealed law. And he said, peace be upon him: "That you lead people astray to the right and to the left." In this there is a requirement to arrive at the truth. His Most High's prohibition of speaking without knowledge likewise entails a requirement to arrive at the truth. Aḥmad ibn Muḥammad ibn ʿAbd Allāh al-Ṭalamankī related to us: Ibn Mufarrij related to us: al-Ṣamūt related to us: related to us al-Bazzar, who is Ahmad ibn Umar ibn Abd al-Khaliq, narrated to us: al-Husayn ibn Mahdi narrated to us: Abd al-Razzaq narrated to us: Maʿmar informed us, from al-Zuhri, from Yahya ibn Saʿid al-Ansari, from Abu Bakr ibn Muhammed ibn Amr ibn Hazm, from Abu Salamah, who is the son of Abd al-Rahman ibn Awf, from Abu Hurayrah,

الشريعة، وقال عليه السلام: أن تضلوا بالناس يمينا وشمالا ففي هذا إيجاب إصابة الحق، وفي نهيه تعالى عن الكلام بغير علم إيجاب لإصابة الحق. حدثنا أحمد بن محمد بن عبد الله الطلمنكي، نا ابن مفرج، ثنا الصموت، ثنا البزار، وهو أحمد بن عمر بن عبد الخالق، نا الحسين بن مهدي، نا عبد الرزاق، أنا معمر، عن الزهري، عن يحيى بن سعيد الأنصاري عن أبي بكر بن محمد بن عمرو بن حزم، عن أبي سلمة هو ابن عبد الرحمن بن عوف عن أبي هريرة عن النبي صلى الله عليه وسلم أنه قال إذا حكم الحاكم فاجتهد وأصاب فله أجران، وإن حكم فاجتهد فأخطأ فله أجر وقد شغب بعضهم في قوله صلى الله عليه وسلم في هذا الخبر إذا اجتهد الحاكم فأخطأ فقال: معناه فتخطى صاحب الحق. قال أبو محمد: وهذا عليهم لا لهم، لأنه ليس إلا خطأ أو صواب، فإذا تخطى صاحب الحق فقد حصل في الخطأ ولم يأمر الله تعالى قط الحاكم بإصابة صاحب الحق، لأنه تكليف ما ليس في وسعه، إنما أمره بالحكم بالبينة العدلة عنده، أو اليمين أو بالإقرار أو بعلمه، فما حكم به من ذلك في موضعه فقد حكم بيقين الحق، أصاب صاحب الحق أو لم يصب، فإن قال قائل: بل تخطى الخطأ، قيل له هذا خروج عن المعقول، لأنه إذا تخطى الخطأ، قيل له هذا خروج عن المعقول، لأنه إذا تخطى الخطأ فقد أصاب، وإذا أصاب فمن الذي أعطي أجرا واحدا على صوابه، ومن الذي أعطي أجرين على صوابه، وهذا وسواس ورقة في الدين ودليل على فساد الاعتقاد، وقال بعضهم: لو كان الحق في واحد لكان ما خالفه ضلالا. قال أبو محمد: ونعم هو ضلال، ولكن ليس كل ضلال كفرا ولا فسقا إلا إذا كان عمدا، وأما إذا كان عن غير قصد فالإثم مرفوع فيه كسائر الخطأ ولا فرق، وقال بعضهم: لو كان الحق في واحد لنص الله على ذلك نصا لا يحتمل التأويل.

from the Prophet ﷺ, that he said: "When a judge passes judgment, exercising independent judgment, and reaches the correct conclusion, he receives two rewards; and if he passes judgment, exercising independent judgment, and errs, he receives one reward."

Some of them have raised a contentious objection concerning his words ﷺ in this report, "When the judge exercises independent judgment and errs," saying: "Its meaning is that he passes over the person entitled to the right." Abu Muhammed said: This counts against them, not in their favor, because there is nothing but error or correctness. If he passes over the person entitled to the right, he has fallen into error. Allah Most High has never commanded the judge to identify the person actually entitled to the right, since that would impose upon him something beyond his capacity. He has only commanded him to judge on the basis of testimony he considers upright, or an oath, or an acknowledgment, or his own knowledge. Whatever judgment he delivers on one of these grounds in its proper place, he has judged by certain truth, whether or not he has identified the person actually entitled to the right. If someone says, "Rather, he passed beyond error," he is told: "This departs from reason, because if he passes beyond error"—he is told: "This departs from reason, because if he passes beyond error, he has reached the correct conclusion. If he has reached the correct conclusion, who is it that has been given one reward for being correct, and who is it that has been given two rewards for being correct?" This is obsessive nonsense, flimsiness in religion, and evidence of corrupt belief.

Some of them said: "If the truth lay in one position, whatever differed from it would be misguidance." Abu Muhammed said: Yes indeed, it is misguidance. But not every instance of misguidance is unbelief or sinful disobedience, except when it is deliberate. When it is unintentional, the sin is lifted, as with every other error; there is no difference. Some of them said: "If the

truth lay in one position, Allah would have stated that explicitly in a text admitting of no alternative interpretation."[8][9][10][11][12]

L2042–2043 Abu Muhammed said: The answer is that Allah Most High has indeed done so. As for the verses we recited in the chapter condemning disagreement in this book of ours, which precedes the chapter we are now in, those verses explicitly state, with clear explicitness, that the truth lies in one position and that all the remaining statements are unsound and erroneous. And His command, Most High, to refer disputes to the Quran and the Sunnah is a clear explanation that the position supported by the text is the truth and is from Allah Most High, while everything other than it is false and is not from Him. He Most High has informed us that disagreement is not from Him, Mighty and Majestic. It is therefore established that whatever is not from Him Most High is false. Thus it is necessarily established that the truth lies in one position. Success comes through Allah Most High.

Some of them argued concerning this that the judge is commanded to enforce what is attested by the two witnesses whom he considers upright, although they may testify to something false; thus he is commanded to do something that, in its underlying reality, is false.

L2044–2046 Abu Muhammed said: This is gross obfuscation. Yes indeed, Allah has com-

قال أبو محمد: فالجواب: أن الله تعالى قد فعل، والآيات التي تلونا في باب ذم الاختلاف من كتابنا هذا وهو قبل هذا الباب الذي نحن فيه، فإن تلك الآيات ناصة نصا جليا على أن الحق في واحد، وأن سائر الأقوال كلها فاسدة وخطأ، وأمره تعالى بالرد عند التنازع إلى القرآن والسنة بيان جلي أن القول الذي يشهد له النص هو الحق وهو من عند الله تعالى، وما عداه باطل ليس من عنده. وقد أخبر تعالى أن الاختلاف ليس من عنده عز وجل، فصح أن ما لم يكن من عنده تعالى فهو باطل، فصح أن الحق في واحد ضرورة وبالله تعالى التوفيق، واحتج بعضهم في ذلك بأن الحاكم مأمور بإنفاذ ما يشهد به الشاهدان العدلان عنده، وقد يشهدان على باطل فهو مأمور بما هو في الباطن باطل.

قال أبو محمد: وهذا تمويه شديد، ونعم قد أمره الله بإنفاذه شهادة هذين الشاهدين اللذين يشهدان بالباطل، بل نهاه عن ردهما، لأنه لا يدري أنهما فاسقان على الحقيقة أو مغفلان لا عدلان، ولكن لما لم يعلمهما كذلك رفع عنه الإثم في الباطن، وأمره بالحكم فهما في الظاهر، وليس يدخل بهذا في جملة المجتهدين، بل قد حكم بالحق المقطوع، على أن الله تعالى أمره بالحكم به، ولو رده لكان عاصيا لله تعالى، فهذا بمنزلة ما أمرنا به من فك الأسير ففكه بالمال فرض علينا، وأخذ العدو ذلك المال حرام عليه وقد بين رسول الله صلى الله عليه وسلم هذا بقوله فمن قضيت له بشيء من حق أخيه فلا يأخذه فإنما أقطع له قطعة من النار فقد نهى النبي صلى الله عليه وسلم من علم الحقيق عن أن ينفذ بخلاف ما يدرك أنه حق، وسألت بعضهم فقلت له: ما تقول

[8] **Translator's note (L2038):** The Qur'anic quotation corresponds to 9:122. The supplied transcription omits written alifs in several words, including "the believers," but its wording remains intelligible. The construction beginning fa-idhā amarnā is syntactically awkward as transcribed. It is understood here as continuing the argument that the command concerns seeking the truth, while the acceptability of what is found depends on its being true.

[9] **Translator's note (L2039):** The quoted fragment, "That you lead people astray to the right and to the left," has no explicit prohibition or governing expression in the supplied text, although the subsequent argument treats it as requiring correctness. This apparent omission has been retained.

[10] **Translator's note (L2040):** The final "related to us" introduces the next transmitter, whose name appears in the following segment; the transmission chain is deliberately left open.

[11] **Translator's note (L2041):** The source repeats the clause beginning "he is told: This departs from reason, because if he passes beyond error." The repetition has been retained.

[12] **Qur'an references (L2038):** Qur'an 9:122 (At-Tawbah).

manded him to enforce the testimony of these two witnesses who testify falsely; indeed, He has forbidden him to reject them, because he does not know that they are in reality two sinful persons, or two inattentive persons, rather than two upright persons. But since he did not know them to be such, the sin concerning the underlying reality was lifted from him, and he was commanded to judge concerning them according to outward appearances. This does not place him among those exercising independent judgment. Rather, he has judged according to the truth concerning which it is certain that Allah Most High commanded him to judge by it. Had he rejected it, he would have been disobedient to Allah Most High. This is comparable to our being commanded to ransom a captive: ransoming him with money is obligatory upon us, while the enemy's taking that money is forbidden to him. The Messenger of Allah ﷺ explained this by saying: "Anyone to whom I award anything belonging by right to his brother must not take it, for I am only cutting off a piece of the Fire for him." The Prophet ﷺ thus forbade anyone who knows the truth to carry into effect anything contrary to what he recognizes as right.

I asked one of them, saying to him: "What do you say of someone who encounters a woman who is not his wife, thinks she is his wife, and has intercourse with her? Is he correct and in the right, or mistaken?" He said to me: "Allah has never forbidden her to him while he is ignorant that she is not his wife." I said to him: "You have ventured upon something grave in saying that Allah Most High has not forbidden him a woman who is not his wife, despite the prohibition having reached him. You have violated consensus and the text by your falsehood concerning His words, Most High: 'Except with their wives or those whom their right hands possess, for then they are not blameworthy. But whoever seeks beyond that—those are indeed transgressors.' This woman is neither his wife nor one whom his right hand possesses. He is therefore a transgressor, mistaken, and having forbidden intercourse; the sin is lifted from him solely because of his ignorance. Furthermore, if she was not forbidden to him, then she was undoubtedly lawful to him, since there is nothing in the world except what is lawful or forbidden." Ibn Abbas said: "Muhammed ﷺ was sent only to declare things forbidden and lawful."

فيمن لقي أجنبية فظنها زوجته فوطئها أمصيب هو محق أم مخطىء؟ فقال لي: ما حرمها الله قط عليه مع جهله بأنها أجنبية، فقلت له: لقد أقدمت على عظيمة في قولك، إن الله تعالى لم يحرم عليه الأجنبية مع بلوغ التحريم إليه وخرقت الإجماع والنص بكذبك في قوله تعالى: {إلا على أزواجهم أو ما ملكت أيمانهم فإنهم غير ملومين * فمن بتغى ورآء ذلك فأولئك هم لعادون} وهذه ليست بزوجة له ولا ملك يمين فهو عاد مخطىء واطىء حرام إلا أن الإثم عنه ساقط لجهله فقط، وأيضا فإذا لم تكن حراما عليه فهي بلا شك حلال له إذ ليس في العالم إلا حلال أو حرام وقال ابن عباس ما بعث محمد صلى الله عليه وسلم إلا محرما ومحللا قال ذلك لإنسان سمعه يقول إن النبي صلى الله عليه وسلم قال في الضب لا أحله ولا أحرمه فقال له ابن عباس ما ذكرنا أو كلاما هذا معناه، فانقطع واحتج بعضهم باستخلاف أبي بكر على القضاء زيد بن ثابت، وهو مخالفه في أقضية كثيرة. قال أبو محمد: وهذا لا حجة لهم فيه، لأننا لا نقلد أبا بكر ولا غيره، وهم يخالفون أبا بكر في عدة قضايا بلا دليل، فلا ينكروا علينا خلافه حيث قام الدليل على خلاف قوله، وقال بعضهم: لو كان الله تعالى كلفنا إصابة الحق وإدراك الصواب لكان تعالى قد كلفنا ما لا نطيق.

He said this to a man whom he heard saying that the Prophet ﷺ had said concerning the spiny-tailed lizard: "I neither declare it lawful nor declare it forbidden." Ibn Abbas said to him what we have mentioned, or words to that effect, and he was left without an answer.

Some of them argued from Abu Bakr's appointing Zayd ibn Thabit as his deputy in judging, although Zayd differed with him in many judgments. Abu Muhammed said: This contains no proof for them, because we do not follow Abu Bakr or anyone else by uncritical imitation. They themselves differ with Abu Bakr on several judicial questions without evidence, so let them not object to our differing with him where there is evidence contrary to his position. Some of them said: "If Allah Most High had charged us with attaining the truth and reaching the correct conclusion, He Most High would have charged us with something beyond our capacity."[13][14][15]

L2047–2049 Abu Muhammed said: This is weak obfuscation, and the person who said what we have mentioned has lied. He, Mighty and Majestic, has charged us in this regard only with what we can do, because many people have reached the correct conclusion and have found it in a sound manner, attaining certainty that they are in the right. Whatever is possible for some of us is possible for all the rest of us. Our success comes only through Allah Most High.

Some of them said: "If people were charged with attaining the actual correct conclusion, anyone who departed from it would have to repeat everything he had done contrary to the truth." Abu Muhammed said: As for prescribed religious duties attached to a period with a defined beginning and end, someone who omitted such a duty altogether is not required to repeat it, except

قال أبو محمد: وهذا تمويه ضعيف، وكذب القائل ما ذكرنا وما كلفنا عز وجل من ذلك إلا ما نطيق، لأنه قد أدرك الصواب كثير من الناس ووجدوه وجودا صحيحا أيقنوا فيه أنهم محقون، وما أمكن بعضنا فهو لسائرنا ممكن وما توفيقنا إلا بالله تعالى، وقال بعضهم: لو كان الناس مكلفين عين الصواب لكان على من خالفه الإعادة لكل ما عمل بغير الحق. قال أبو محمد: أما ما كان من الشرائع مرتبطا بوقت محدود الأول والآخر، فلا إعادة على من تركه أصلا، إلا حيث جاء النص بإعادته، لأنه لا سبيل إلى رجوع وقت تلك الشريعة، وهي لم نؤمر بها إلا في ذلك الوقت، فلا سبيل إلى أدائها، إذ لا سبيل إلى الوقت الذي لا تؤدى إلا فيه كالصلاة وما أشبهها، والصيام ونحوه فلا يقضي شيئا من ذلك لا جاهل ولا عامد ولا متأول، حاشى الناسي والنائم للصلاة، وحاشا المريض والمسافر والمتقيء عمدا للصوم فقط، وأما ما كان مرتبطا بوقت محدود الأول غير محدود الآخر، أو كان غير مرتبط بوقت فهو مؤدى أبدا، ومعاد، ولا بد كإنسان جهل الزكاة في البر فبقي سنين مسلما مالكا لمقدار تجب فيه الزكاة منه، ثم علم بعد ذلك فعليه الزكاة للسنين الخالية، وكإنسان لم يعلم أن السلم في غير المكيل والموزون لا يجوز، فسلم سنين جمة في حيوان، أو فيما لا يكال ولا يوزن،

[13] **Translator's note (L2044):** The source reads fa-humā, literally "the two of them," in the phrase rendered "to judge concerning them according to outward appearances." The construction is awkward and may be a transcription error for bihimā, "on the basis of the two of them." The source's al-ḥaqīq in "anyone who knows the truth" appears to be a defective or corrupt reading; it has been translated according to the immediate context.

[14] **Translator's note (L2045):** The Quranic quotation contains defective forms, including "fa-man btaghā" and "la-ʿādūn," where the familiar wording has "fa-man ibtaghā" and "al-ʿādūn" respectively. The translation conveys the supplied wording's apparent sense; these defects have not been silently treated as an exact quotation.

[15] **Qur'an references (L2044):** Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij).

where a text requires its repetition. This is because there is no way to bring back the time for that prescribed duty, and we were commanded to perform it only within that time. There is therefore no way to perform it, since there is no way to recover the time within which alone it can be performed, as with prayer and similar duties, and fasting and the like. Thus none of these is to be made up by someone who acted in ignorance or deliberately or on the basis of an interpretation, with the exception, for prayer, of someone who forgot or slept through it, and, for fasting alone, of the sick person, the traveler, and someone who deliberately induced vomiting. As for a duty attached to a period whose beginning is defined but whose end is not, or one not attached to a period at all, it remains due for performance at all times and must necessarily be repeated. An example is someone who was ignorant of the obligatory alms on wheat and remained for years a Muslim possessing an amount of it on which obligatory alms were due, and then subsequently learned of this: he owes the obligatory alms for the past years. Another example is someone who did not know that a forward purchase with advance payment is impermissible for anything other than goods measured by volume or weight, and for many years made such purchases of animals or of things neither measured by volume nor weighed, and then learned of this: he must rescind every such acquisition and return what he received to its owners. The ruling concerning him is the same as the ruling concerning a usurper who repents while holding another's property; there is no difference. Another example is someone whose independent judgment led him to conclude that he owed no maintenance to a person from whom he stands to inherit or to a blood relative whom he is forbidden to marry, and who continued in this manner for decades before learning otherwise: it is a debt he owes, which he must continue to discharge to them, and it is to be paid out of the principal of his estate if he dies. The same applies in every matter. Success comes through Allah Most High.

Some of them raised the contentious objection that, when jurists give a layperson conflicting opinions, he is free to choose among their positions. Abu Muhammed said: This is an error, and we do not hold this position. We have explained this question in the chapter on uncritical imitation in this

ثم علم فعليه فسخ كل ما أخذ من ذلك ورده إلى أربابه، والحكم فيه كحكم الغاصب فيما بيده إذا تاب ولا فرق، وكإنسان أداه اجتهاده إلى أنه لا نفقة لموروثه وذي رحمه المحرمة عليه، فأقام كذلك عشرات سنين، ثم علم فهي دين عليه يؤديها إليهم أبدا، ويخرج من رأس ماله إن مات، وهكذا في كل شيء، وبالله تعالى التوفيق. وشغب بعضهم بأن العامي إذا اختلف عليه الفقهاء فإنه مخير في أقوالهم. قال أبو محمد: وهذا خطأ، ولسنا نقول به، وقد بينا هذه المسألة في باب التقليد من كتابنا هذا، فأغنى عن إعادته، وموه بعضهم بأن قال: الميتة عين واحدة وهي حلال للمضطر حرام على غير المضطر. قال أبو محمد: وهذا عين الشغب والتمويه، لأننا لم ندفع نحن اختلاف حكم العين الواحدة على إنسانين متغايرين، أو في وقتين مختلفين، بل هذا لازم في كل عين، فمال زيد حلال لزيد حرام على عمرو، والأكل في شوال حلال للبالغين العقلاء وحرام عليهم في رمضان، وهكذا جميع الشرائع أولها عن آخرها.

book of ours, which dispenses with repeating it. Some sought to obscure the issue by saying: "Carrion is one and the same individual thing, yet it is lawful for someone under necessity and forbidden to someone who is not under necessity." Abu Muhammed said: This is sheer contentiousness and obfuscation, for we have not denied that the ruling concerning one and the same individual thing may differ for two different people or at two different times. Indeed, this necessarily applies to every individual thing: Zayd's property is lawful for Zayd and forbidden to ʿAmr; eating in Shawwal is lawful for sane adults, whereas it is forbidden to them in Ramadan. So it is with all the religious laws, from first to last.

L2050–2051 Likewise, for every person, prayer is obligatory on one occasion, when its appointed time begins, and forbidden on another, before its appointed time begins. On one occasion Zayd's blood is inviolable, and on another it is lawful to shed it. What we have denied is that carrion should be lawful for Zayd and forbidden to him at one and the same time; that a sale should be complete before the parties physically separate and incomplete before the parties physically separate; and that exacting retaliation from the killer should be obligatory and forbidden at one and the same time. It is madness like this that we have rejected, because no person possessed of reason, or even a vestige of intelligence, would credit it, and because it is something no one can accomplish. It leads to obsessive confusion, and to Zayd being told: "If you perform this act, you are rewarded for it and in Paradise, and you are sinful for it and in the Fire, all at one and the same time." There is no possibility of anyone being in the Fire and in Paradise at one and the same time, or of someone, through a single act, being disobedient to Allah, mighty and majestic, by that act and obedient to Him at one and the same time. This obsessive confusion is what we have refuted, and nothing else that is intelligible. Some said: "If we were charged with attaining the truth, the Exalted would have established evidence for it such that whoever attained it would know that he had attained it, and whoever missed it would know that he had missed it." Abu Muhammed said: The answer to this is that we affirm precisely this concerning all the first principles of our positions. The foundation of our position is that adhering to the apparent meaning of the

وهكذا كل أحد مرة تلزمه الصلاة إذا دخل وقتها، ومرة تحرم عليه قبل دخول وقتها، ومرة يحرم دم زيد، ومرة يحل، وإنما أنكرنا أن تكون الميتة حلالا لزيد حراما عليه في وقت واحد، وأن يكون البيع تاما قبل التفرق بالأبدان، غير تام قبل التفرق بالأبدان، والقصاص من القاتل واجبا حراما في وقت واحد، فمثل هذا الجنون أنكرنا لأنه لا يصدقه ذو عقل، ولا من به طباخ، ولأنه شيء لا يقدر عليه أحد، لأنه يؤدي إلى الوسواس، وإلى أن يقال لزيد: إن فعلت هذا الفعل فأنت مأجور عليه وفي الجنة، وأنت آثم عليه وفي النار وفي وقت واحد، ولا سبيل إلى أن يكون أحد في النار وفي الجنة في وقت واحد، ولا أن يكون بفعل واحد عاصيا لله عز وجل بذلك الفعل مطيعا له في وقت واحد. فهذا الوسواس أبطلنا لا غيره مما يعقل؛ وقال بعضهم: لو كنا مكلفين إصابة الحق لكان تعالى قد نصب عليه دليلا من أصابه علم أنه أصابه، ومن أخطأه علم أنه أخطأه. قال أبو محمد: والجواب عن هذا: أن أوائل مذاهبنا كلها نحن نقول فيها بذلك، وأصل مذهبنا أن الأخذ بظاهر القرآن والحديث الصحيح حق، ونحن على يقين من أننا مصيبون في ذلك، وفي كل قول أدانا إليه أخذنا بظاهر القرآن والحديث الصحيح، وأن من خالفنا مخطىء عند الله عز وجل، ونحن على يقين من ذلك، لا نشك فيه ولا يكن خلافه، وإنما يخفى علينا الحق في بعض الجزئيات، مثل

Quran and authentic hadith is true. We are certain that we are correct in this and in every position to which our adherence to the apparent meaning of the Quran and authentic hadith has led us, and that whoever disagrees with us is mistaken before Allah, mighty and majestic. We are certain of this, have no doubt about it, and its contrary cannot be. The truth is hidden from us only in some particulars, such as construing two particular hadiths when we do not know which is the abrogating one and which the abrogated one. We do not deny that the truth is hidden from us in some of these instances. Others have undoubtedly known the correct understanding of matters hidden from us, just as we have known it in matters hidden from others. Whoever witnessed the Prophet—may Allah bless him and grant him peace ﷺ—and the issuance of commands from him undoubtedly possessed certain knowledge concerning what was absent from our experience. Some said: "A person may hold a position, support it, fight in its defense, and believe that the truth lies in it, and then move to another."[16]

بناء حديثين بأعيانهما لا ندري أيهما الناسخ من المنسوخ، ولسنا ننكر خفاء الحق علينا في بعض هذه المواضع، وقد علم غيرنا بلا شك وجه الحق فيما خفي علينا كما علمناه نحن فيما خفي على غيرنا ومن شاهد النبي صلى الله عليه وسلم وورود الأوامر منه علم اليقين فيما غاب عنا بلا شك. وقال بعضهم: قد يكون الإنسان على مذهب يعضده ويقاتل عنه، ويعتقد الحق فيه ثم ينتقل إلى غيره.

L2052–2057

Abu Muhammed said: Had someone who denies realities said this, it would have been more in keeping with his position. This has no substance, because anyone who holds one position and then abandons it for another must fall into one of two cases, with absolutely no third possibility: either he holds the truth, and then a specious argument presents itself to him, which he neither examines thoroughly nor subjects to an exhaustive investigation of the demonstration according to its requisite conditions, so that he abandons the truth for falsehood and errs in doing so; or he holds a position whose correctness has not been established for him by a demonstration, having believed it only on the strength of a specious argument concerning which he did not exhaustively investigate the methods of demonstration. He then abandons it for another specious argument that presents itself to him, thus moving from one falsehood to another like it; or he abandons it for some-

قال أبو محمد: لو قال هذا من يبطل الحقائق لكان أشبه بقوله، وهذا لا معنى له، لأن كل من كان على مذهب ثم تركه لآخر فإنه لا يخلو من أحد وجهين لا ثالث لهما البتة، إما أن يكون على حق ثم دخلت عليه شبهة لم ينعم فيها النظر، ولا تقصي البرهان على شرائطه، فترك الحق للباطل، وأخطأ في ذلك، أو كان على مذهب لم يقم له على صحته برهان، وإنما اعتقده بشبهة لم يتقص فيها طرائق البرهان فتركه لشبهة أخرى دخلت عليه، فانتقل من باطل إلى مثله، أو تركه لشيء يقوم عليه برهان صحيح، فانتقل من باطل إلى حق فهو لا بد مغفل ضرورة ومخطىء بلا شك، ومضرب عن طلب البرهان الصحيح، إما أنه لم يبلغه، وإما لأنه لم يتقصه ولا تأمله، فلا بد له من الخطأ كما قلنا إما في اعتقاده الأول الذي انتقل عنه، وإما في اعتقاده الثاني الذي انتقل إليه أو في كليهما. ونحن لم ننف الخطأ عن الناس بل أثبتناه، وإنما نفينا التضاد على الحق، وأن ينتقل من حق غير منسوخ إلى حق مضاد لذلك الحق الذي انتقل عنه، فهذا هو المحال الذي لا سبيل إليه البتة. وقد بينا وجوه البراهين الصحاح الذي لا يصح شيء

[16] **Translator's note (L2051):** طباخ is an unusual word here, understood idiomatically as a vestige of intelligence or discernment. The wording ولا يكن خلافه is grammatically irregular; "and its contrary cannot be" represents its apparent sense. The phrase بناء حديثين بأعيانهما, rendered "construing two particular hadiths," is awkward; the following clause indicates uncertainty over which hadith abrogates the other.

thing supported by a sound demonstration, thus moving from falsehood to truth. He must necessarily have been negligent, undoubtedly mistaken, and turned away from seeking sound demonstration, either because it did not reach him or because he did not investigate it exhaustively or consider it. He must therefore have erred, as we have said, either in his first belief, which he abandoned, or in his second belief, to which he moved, or in both. We have not denied that people err; rather, we have affirmed it. What we have denied is that truth admits of contradiction, and that someone can move from a truth that has not been abrogated to a truth contrary to the truth he abandoned. This is the impossibility for which there is absolutely no way. We have explained the forms of sound demonstrations, without which nothing can be established as correct, and the demonstration that can never be anything but sound. We have also explained what is thought to be a demonstration but is no demonstration, in our book entitled Bringing the Definitions of Logic within Reach. It is a book of considerable usefulness and great benefit, indispensable to anyone seeking realities. Whoever desires reassurance and to attain knowledge of realities should read it, then read our discussion of the modes of knowledge in our book entitled The Book of Distinction, and then read this book of ours. Realities will then become apparent to him without obscurity. Success comes through Allah the Exalted. Now that everything with which they have stirred up contention has been invalidated, praise be to Allah, let us proceed to establish the demonstration invalidating their unsound position. In Allah the Exalted we seek protection. Among these demonstrations is that those who uphold this position agree among themselves that they uphold it only where no explicit text from the Quran or an authentic Sunnah is found, according to their differing views of the characteristics of what must be accepted of the transmitted Sunnahs. Where an explicit text from the Quran or a Sunnah exists, however, they hold that no one is permitted to exercise independent legal reasoning in opposition to it; rather, in their view, whoever opposes it is mistaken. Abu Muhammed said: If this is their position, then, praise be to Allah the Exalted, we have been spared the trouble of dealing with them, because there is no case that arises for which an explicit text does not exist. Were this otherwise, that ruling would constitute legislation within the religion that is

إلا بها، والبرهان الذي لا يكون أبدا إلا صحيحا، وبينا ما يظن أنه برهان وليس ببرهان في كتابنا الموسوم بالتقريب لحدود المنطق وهو كتاب جليل المنفعة عظيم الفائدة، لا غنى لطالب الحقائق عنه فمن أحب أثلج، وأن يقف على علم الحقائق فليقرأه. ثم ليقرأ كلامنا في وجوه المعارف من كتابنا الموسم بكتاب الفصل، ثم ليقرأ كتابنا هذا فإنه يلوح له الحقائق دون إشكال، وبالله تعالى التوفيق، فإذا بطل كل ما شغبوا به بحمد الله، فلنقل في إقامة البرهان على إبطال قولهم الفاسد وبالله تعالى نعتصم. فمن ذلك أن القائلين بهذه المقالة إنما يقولون بها باتفاق منهم، حيث لا يوجد نص من قرآن أو سنة صحيحة على حسب اختلافهم في صفة ما يجب قبوله من السنن، وأما حيث يوجد نص قرآن أو سنة فلا يسع أحدا عندهم اجتهد في خلافها، بل هو مخطىء مخالفها عندهم. قال أبو محمد: فإذا كان هذا قولهم فقد كفينا بحمد الله تعالى مؤونتهم، لأنه لا نازلة إلا وفيها نص موجود، ولو لم يكن كذلك لكان ذلك الحكم شرعا في الدين ليس من الدين، وهذا تناقض وموهوا أيضا بلفظه الاجتهاد فقالوا: هذا مما يسوغ فيه الاجتهاد، وهذا مما لا يسوغ فيه الاجتهاد. قال أبو محمد: حقيقة الأمر هي أنهم إن كانوا يعنون بالاجتهاد اجتهاد المرء نفسه في طلب حكم دينه في مظان وجوده ولا مظان لوجود الدين إلا القرآن والسنن فقد صدقوا، والاجتهاد المذكور فرض على كل أحد في كل شيء من الدين، فهو قولنا، وإن كانوا يعنون بالاجتهاد أن يقول برأيه ما أداه إليه ظنه، فهذا باطل لا يحل أصلا في شيء من الدين، وإيقاع لفظه الاجتهاد على هذا المعنى باطل في الديانة وباطل في اللغة، وتحريف للكلم عن مواضعه، ونعوذ بالله من هذا ومما يبطل قولهم وإن كان فيما أوردنا كفاية أنهم يقولون: إن كل قائل مجتهد فهو حق محق مصيب، ونحن نقول: إنهم في قولهم هذا مخطئون عند الله عز وجل بلا شك، وإنهم فيه على باطل، فإذا حكموا لنا بالصواب والصدق في قولنا، فقد أقروا ببطلان قولهم، لأننا محقون في قولنا أنهم مخطئون بإقرارهم، وفي هذا كفاية

not part of the religion, and this is a contradiction. They also obscured the issue by using the expression "independent legal reasoning," saying: "This is a matter in which independent legal reasoning is permissible, and this is a matter in which independent legal reasoning is not permissible." Abu Muhammed said: The reality of the matter is that, if by independent legal reasoning they mean a person's exerting himself in seeking the ruling of his religion in the places where it is to be found—and there are no places in which the religion is to be found other than the Quran and the transmitted Sunnahs—then they have spoken truly. The exertion just mentioned is obligatory upon everyone in every matter of religion, and this is our position. But if by independent legal reasoning they mean that someone should state, on the basis of his own opinion, whatever his conjecture has led him to, then this is false and is absolutely impermissible in any matter of religion. Applying the expression "independent legal reasoning" to this meaning is invalid in religion and invalid in language, and constitutes displacing words from their proper places. We seek refuge in Allah from this. Another thing that invalidates their position, although what we have already presented is sufficient, is that they say: "Every person who states a position while exercising independent legal reasoning is true, in the right, and correct." We say that, in making this statement, they are undoubtedly mistaken before Allah, mighty and majestic, and that they hold a false position in this matter. Thus, when they judge us correct and truthful in our statement, they have acknowledged the invalidity of their own statement, because, by their own admission, we are in the right when we say that they are mistaken. This suffices for anyone who understands. They should be asked: "Among those who pronounce legal opinions, has anyone erred, or not?" If they say, "No," they obstinately deny the evident, because sense perception attests that error exists. If they say, "Yes," they have abandoned their unsound position that everyone exercising independent legal reasoning is correct. They should also be asked about the Exalted's prohibition of division: "Did He prohibit something true or something false?" If they say, "Something true," they have disbelieved. If they say, "He prohibited something false," they have abandoned their unsound posi-

لمن عقل، ويقال لهم أفي المتكلمين في الفتيا أحد أخطأ أم لا؟ فإن قالوا لا، كابروا لأن الحس يشهد بأن الخطأ موجود، وإن قالوا نعم، تركوا قولهم الفاسد إن كل مجتهد مصيب، ويسألون عن نهيه تعالى عن التفرق أنهي عن حق أم عن باطل؟ فإن قالوا: عن حق كفروا. وإن قالوا: نهي عن باطل، تركوا قولهم الفاسد، وكل آية تلوناها في باب ذم الاختلاف من كتابنا هذا فهي مبطلة لقولهم الفاسد في هذا الباب

tion. Every verse we have recited in the chapter condemning disagreement in this book of ours invalidates their unsound position in this chapter.[17][18]

L2058–2059

Success comes through Allah the Exalted. Among these is His statement, exalted is He: "O you who believe, obey Allah and obey the Messenger and those vested with authority among you. If you dispute over anything, refer it to Allah and the Messenger, if you believe in Allah and the Last Day. That is better and finer in outcome." The Exalted has thus not given us leave to persist in dispute, and has commanded us to refer back to the explicit text and adhere to it. Furthermore, religion is not entrusted to whatever those who speak wish to say; whoever says this is an unbeliever. Rather, religion is referred back to an explicit text of consensus. Whoever departs from the proper course in this is mistaken. Furthermore, Allah the Exalted says: "Does not burden Allah any soul beyond its capacity. It shall have what it has earned, and against it shall be what it has incurred. Our Lord, do not take us to task if we forget or make a mistake. Our Lord, do not lay upon us a burden such as You laid upon those before us. Our Lord, do not burden us with what we have no power to bear. Pardon us, forgive us, and have mercy upon us. You are our Protector, so grant us victory over the disbelieving people." It is not within anyone's capacity to believe that one and the same thing is forbidden and lawful at the same time for one and the same person, nor that the ruling of religion shifts from permission to prohibition

وبالله تعالى التوفيق ومن ذلك قوله تعالى {يا أيها لذين آمنوا أطيعوا لله وأطيعوا لرسول وأولي لأمر منكم فإن تنازعتم في شيء فردوه إلى لله ولرسول إن كنتم تؤمنون بلله وليوم لآخر ذلك خير وأحسن تأويلا} فلم يطلق لنا تعالى البقاء على التنازع وأمرنا بالرد إلى النص والأخذ به، وأيضا فإن الدين ليس موكولا إلى ما أراد القائلون أن يقولوه وقائل هذا كافر، وإنما الدين مردود إلى نص إجماع، فمن خالف الوجه في ذلك فهو مخطىء وأيضا فإن الله تعالى يقول {لا يكلف لله نفسا إلا وسعها لها ما كسبت وعليها ما كتسبت ربنا لا تؤاخذنا إن نسيناآ أو أخطأنا ربنا ولا تحمل علينآ إصرا كما حملته على لذين من قبلنا ربنا ولا تحملنا ما لا طاقة لنا به وعف عنا وغفر لنا ورحمنآ أنت مولانا فنصرنا على لقوم لكافرين} وليس في الوسع أن يعتقد أحد كون شيء واحد حراما حلالا في وقت واحد على إنسان واحد، ولا أن الدين ينتقل حكمه من تحليل إلى تحريم إذا حرم الشي مفت ما وحلله مفت آخر.

[17] **Translator's note (L2054):** The wording فمن أحب أثلج وأن يقف is syntactically defective. "Whoever desires reassurance and to attain" conveys its apparent intended sense; أثلج suggests the reassurance or satisfaction of the heart. The book titles are translated from the wording supplied: التقريب لحدود المنطق and كتّاب الفصل.

[18] **Translator's note (L2055):** The supplied اجتهد is grammatically irregular in this construction; it is understood here as referring to the exercise of independent legal reasoning.

when one mufti declares something forbidden and another mufti declares it lawful.[19][20][21]

L2060–2062

Furthermore, a mufti has no authority to legislate, declare things lawful, or declare things forbidden. His duty is only to report, on behalf of Allah Most High, His ruling concerning this particular case. It is impossible that Allah Most High's ruling concerning it should not be settled as either permission, prohibition, or obligation. His statement, Most High, "Forbidden to you are carrion, blood, the flesh of swine, that over which a name other than Allah's has been invoked, the strangled animal, the animal killed by a blow, the animal killed by a fall, the animal gored to death, and that which a beast of prey has eaten—except what you duly slaughter—and that which has been slaughtered upon sacrificial stones; and that you seek allotments by divining arrows. That is disobedience. Today those who disbelieve have despaired of your religion, so do not fear them, but fear Me. Today I have perfected your religion for you, completed My favor upon you, and approved Islam as your religion. But whoever is compelled by severe hunger, without inclining toward sin—then Allah is forgiving, merciful," makes clear that the ruling has been settled in every particular case as either prohibition, permission, or obligation. Whoever declares things lawful and forbidden on the basis of the jurists' disagreement has acknowledged that they prohibit, permit, and impose obligations. This is unbelief on the part of whoever believes it. His statement, Most High, "And do not say, concerning the falsehood your tongues describe, 'This is lawful and this is forbidden,' so as to fabri-

وأيضا فإن المفتي ليس له أن يشرع، ولا أن يحلل ولا أن يحرم، وإنما عليه أن يخبر عن الله تعالى بحكمه في هذه النازلة، ومن المحال أن يكون حكم الله تعالى فيها غير مستقر، إما بتحليل، وإما بتحريم وإما بوجوب قوله تعالى {حرمت عليكم لميتة ولدم ولحم لخنزير ومآ أهل لغير لله به ولمنخنقة ولموقوذة ولمتردية ولنطيحة ومآ أكل لسبع إلا ما ذكيتم وما ذبح على لنصب وأن تستقسموا بلأزلام ذلكم فسق ليوم يئس لذين كفروا من دينكم فلا تخشوهم وخشون ليوم أكملت لكم دينكم وأتممت عليكم نعمتي ورضيت لكم لأسلام دينا فمن ضطر في مخمصة غير متجانف لإثم فإن لله غفور رحيم} مبين أن الحكم قد استقر في كل نازلة، إما بتحريم، وإما بتحليل، وإما بإيجاب، ومن حلل وحرم باختلاف الفقهاء، فقد أقر أنهم يحرمون ويحللون ويوجبون، فهذا كفر ممن اعتقده، وقوله تعالى {ولا تقولوا لما تصف ألسنتكم لكذب هذا حلال وهذا حرام لتفتروا على لله لكذب إن لذين يفترون على لله لكذب لا يفلحون} مبطل لقول من قال إن الشيء يكون حراما حلالا باختلاف الفقهاء فيه، ومخبر أن قائل ذلك كاذب، وأنه ما حرم الله تعالى فهو حرام لا حلال، وما أحله تعالى فهو حلال لا حرام وكذلك القول فيما أوجب تعالى وقال صلى الله عليه وسلم إن الحلال بين وإن الحرام بين وبينهما مشتبهات لا يعلمها كثير من الناس فلو لم يكن علينا إصابة الحق، وكنا لا يلزمنا شيء إلا الاجتهاد فقط لكان كل أحد من الناس عالما بحكم تلك المشتبهات؛ بل كانوا ناقلين بأقوالهم للحرام البين إلى التحليل؛ وللحلال البين إلى التحريم وهذا كفر وتكذيب للنبي صلى الله عليه وسلم فصح لما ذكرنا أن من لم يعلم تلك المشتبهات فقد جهلها، ومن جهلها فقد أخطأها ولم يصب الحق فيها، وصح أن القائل في الحرام: أنه حلال أو في الحلال أنه حرام مخطىء بيقين لا شك فيه، وبالله تعالى التوفيق. ويلزم من قال:

[19] **Translator's note (L2058):** The Quranic quotation, corresponding to 4:59, repeatedly omits written alifs in words such as Allah, the Messenger, and the Last Day. The recognizable wording is rendered in English. The supplied نص إجماع literally reads "an explicit text of consensus." A conjunction may be missing between "explicit text" and "consensus"; it has not been silently inserted. The final Quranic quotation ends after لا يكلف, before its subject, Allah, which occurs in the following segment. The fragment is retained without supplying that subject.

[20] **Translator's note (L2059):** The opening continues the quotation of Quran 2:286: the words meaning "does not burden" occur in the preceding segment. The fragment retains the Arabic order across this boundary. The Quranic transcription repeatedly omits written alifs and other letters; the intended words remain identifiable.

[21] **Qur'an references (L2058):** Qur'an 4:59 (An-Nisa); Qur'an 2:286 (Al-Baqarah).

cate falsehood against Allah. Indeed, those who fabricate falsehood against Allah will not prosper," invalidates the statement of anyone who says that a thing becomes forbidden and lawful through the jurists' disagreement about it. It declares that whoever says this is a liar, and that whatever Allah Most High has forbidden is forbidden, not lawful, and whatever He, Most High, has permitted is lawful, not forbidden. The same applies to whatever He, Most High, has made obligatory. He—may Allah bless him and grant him peace ﷺ—said: "Indeed, what is lawful is clear, and indeed, what is forbidden is clear, and between them are doubtful matters which many people do not know." If we were not required to arrive at the truth, and nothing were incumbent upon us except the exercise of independent judgment alone, then every single person would know the ruling concerning those doubtful matters. Indeed, by their statements they would be transferring what is clearly forbidden into the category of the lawful, and what is clearly lawful into the category of the forbidden. This is unbelief and a declaration that the Prophet lies—may the blessings of Allah and peace be upon him. Thus, from what we have mentioned, it is established that whoever does not know those doubtful matters is ignorant of them; whoever is ignorant of them has erred concerning them and has not arrived at the truth about them. It is established that whoever says of something forbidden that it is lawful, or of something lawful that it is forbidden, is mistaken with certainty, without any doubt. Through Allah Most High comes success. Whoever says that every person who voices an opinion through independent judgment is correct must also say that whoever declares those who adopt interpretations to be disbelievers is right and truthful, and that he must say that whoever declares them to be believers who are morally corrupt is right and truthful, and that he must say that whoever declares them to be believers who are not morally corrupt is right and truthful. It would follow from this that a man is a disbeliever, a

إن كل قائل مجتهد مصيب أن يقول: إن من قال: إن المتأولين كفار أن يكون محقا صادقا، وأن يقول: إن من قال إنهم مؤمنون فساق أن يكون محقا صادقا، وأن يقول: إن من قال إنهم مؤمنون غير فساق أن يكون محقا صادقا، فيلزم من هذا أن يكون الرجل كافرا مؤمنا فاسقا فاضلا في وقت واحد؛ وهذا لا يقوله من يقذف بالحجارة.

believer, morally corrupt, and virtuous at the same time. This is something that even someone pelted with stones would not say.[22][23][24][25]

L2063–2064 It would also follow from this that a person abides eternally in Paradise and abides eternally in the Fire at the same time, because the disbeliever abides eternally in the Fire and the believer abides eternally in Paradise. Thus, if a person is a disbeliever because someone says of him that he is a disbeliever, and a believer because someone says of him that he is a believer, he is in Paradise and in the Fire at the same time. No one but someone afflicted with obsessive delusions would say this. All these positions have been maintained by eminent leading scholars—I mean, declaring the people of doctrinal whims to be disbelievers and rejecting their classification as disbelievers—from among the Companions and the Successors, and onward thereafter. It suffices here that He, Most High, has expressly stated that His path is one and that all the other paths diverge from His path. The Prophet—may Allah bless him and grant him peace ﷺ—also expressly declared a number of the Companions, may Allah be pleased with them, who exercised independent judgment to have erred. Examples include his declaring, peace be upon him, that Abu Bakr erred in his interpretation of the dream; that Umar erred in his statement concerning the emigrants' migration to Abyssinia; and that Usayd ibn al-Hudayr erred in saying, "Amir ibn al-Akwa'ʿs striving in battle has come to nothing"; as well as the other legal opinions in which they erred, such as Abu al-Sanabil's imposing upon a pregnant woman whose husband had died the later of the two terms. Examples of this are numerous. Through Allah Most High comes success. Muhammed ibn Saʿid related to us: Ahmad ibn Abd al-Basir related to us: Qasim ibn Asbagh related to

ويلزم من هذا أن يكون المرء في الجنة مخلدا، وفي النار مخلدا في وقت واحد، لأن الكافر مخلد في النار، والمؤمن مخلد في الجنة، فإذا كان المرء كافرا بقول من قال فيه إنه كافر، ومؤمنا بقول من قال فيه إنه مؤمن فهو في الجنة وفي النار في وقت واحد، وهذا ما لا يقوله إلا موسوس، وكل ذلك قد قال به فضلاء أئمة من أهل العلم يعني تكفير أهل الأهواء، وإبطال تكفيرهم من الصحابة والتابعين إلى هلم جرا، ويكفي من هذا أن تعالى قد نص على أن سبيله واحدة، وأن سائر السبل متفرقة عن سبيله وقد نص النبي صلى الله عليه وسلم على تخطئة جماعة من الصحابة رضي الله عنهم من المجتهدين كتخطئته عليه السلام أبا بكر في تفسيره للرؤيا، وعمر في قوله في هجرة المهاجرين إلى الحبشة، وأسيد بن الحضير في قوله: بطل جهاد عامر بن الأكوع، وسائر الفتاوى التي أخطؤوا فيها؛ كأبي السنابل في وضعه على الحامل المتوفى عنها زوجها آخر الأجلين، ومثل هذا كثير: وبالله تعالى التوفيق. حدثنا محمد بن سعيد، نا أحمد بن عبد البصير، ثنا قاسم بن أصبغ، ثنا محمد بن عبد السلام الخشني، ثنا محمد بن المثنى، ثنا عبد الرحمن بن مهدي، ثنا سفيان الثوري، عن حبيب بن أبي ثابت، عن خالد بن سعد قال: دخل أبو مسعود على حذيفة فقال: اعهد إلي، قال: ألم يأتك اليقين؟ قال: بلى فإن الضلالة كل الضلالة أن تعرف ما كنت تنكر أو تنكر ما كنت تعرف، وإياك والتلون في دين الله أو في أمر الله، فإن دين الله واحد، فبين حذيفة ووافقه أبو مسعود رضي الله عنهما، وهذا نص قولنا، والذي لا يجوز غيره وهو ما استقر عليه الأمر إذا مات النبي صلى الله عليه وسلم وبالله تعالى التوفيق وهو حسبنا ونعم الوكيل

[22] **Translator's note (L2060):** The final salutation is divided between this segment and the next; only its opening is translated here. The Quranic quotations contain recurrent transcriptional omissions of letters, but their intended wording is identifiable.

[23] **Translator's note (L2061):** The opening completes the salutation begun in the preceding segment. "Those who adopt interpretations" renders al-mutaʾawwilūn, referring here to people whose disputed doctrinal positions rest on interpretation.

[24] **Translator's note (L2062):** The unvocalized expression "someone pelted with stones" can grammatically also mean "someone who throws stones." The passive reading is adopted as a polemical reference to someone treated as mad.

[25] **Qur'an references (L2060):** Qur'an 5:3 (Al-Ma'idah); Qur'an 16:116 (An-Nahl).

us: Muhammed ibn Abd al-Salam al-Khushti related to us: Muhammed ibn al-Muthanna related to us: Abd al-Rahman ibn Mahdi related to us: Sufyan related to us, al-Thawri, on the authority of Habib ibn Abi Thabit, on the authority of Khalid ibn Saʿd, who said: Abu Masʿud visited Hudhayfa and said, "Give me your counsel." He said, "Has certainty not come to you?" He said, "Yes." "Then misguidance, utter misguidance, is that you recognize what you used to reject, or reject what you used to recognize. Beware of changing colors in Allah's religion—or in Allah's affair—for Allah's religion is one." Hudhayfa thus made this clear, and Abu Masʿud agreed with him, may Allah be pleased with them both. This is the explicit statement of our position, the only position that is permissible: namely, what the matter had become settled upon when the Prophet—may Allah bless him and grant him peace ﷺ—died. Through Allah Most High comes success. He is sufficient for us, and an excellent Trustee.[26][27]

[26] **Translator's note (L2063):** "The later of the two terms" refers to the competing end-points of a pregnant widow's waiting period: childbirth and the prescribed period following her husband's death. The surname al-Khushti is retained from the supplied transcription; its exact reading is uncertain.

[27] **Translator's note (L2064):** "Al-Thawri" completes Sufyan's name from the preceding segment. The report supplies no explicit speech marker after "Yes"; the ensuing counsel is understood as Hudhayfa's resumed speech. The alternative "in Allah's religion—or in Allah's affair" is preserved as transmitted.



PRECISION IN THE FOUNDATIONS OF LEGAL RULINGS

الباب 27: الشذوذ

Chapter 27: Deviation

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[Chapter Twenty-Seven: On Deviation]

L2065

L2066–2072 Abu Muhammed said: Deviation, in the language in which we have been addressed, means departing from the whole. It is agreed that this expression has been assigned a particular meaning in the revealed Law, but people have disagreed about that meaning. One group said: "Deviation is one scholar's parting company with all the others." This is a position whose invalidity we have already demonstrated in the chapter discussing consensus in this book of ours. Praise be to Allah, Lord of all worlds. For when an individual disagrees with the majority in favor of a truth, he is praiseworthy and commendable, whereas deviation is blameworthy by consensus. It is therefore impossible for a person to be praiseworthy and blameworthy in the same respect at the same time, and impossible for one thing to entail praise and blame together at the same time in the same respect. This is a necessary demonstration. All the Companions, may Allah be pleased with them, disagreed with Abu Bakr concerning warfare against the apostates. At the time of their disagreement, they were all mistaken, and he alone was correct. Thus the aforementioned position is invalid. Another group said: "Deviation is that the scholars reach consensus on some matter, and then a man departs from among them from that position in which he had joined them." This is the position of Abu Sulayman and the majority of our associates. Such a case, if it occurred, would be one kind of deviation; it is neither an essential definition nor a descriptive definition of deviation. What they have mentioned, if it occurred, would be both deviation and unbelief, because we have already demonstrated in the chapter discussing consensus that whoever departs from consensus while being certain that it is consensus has disbelieved. Moreover, what has been mentioned falls within the realm of the impossible and the absurd. Would that I knew when we ever ascertained with certainty the consensus of all the scholars, every one of them, in a single gathering, such that they agree and then one of them disagrees with them! Our position—and through Allah Most High comes success—is that the definition of deviation is opposition to the truth. Everyone who opposes what is correct in any question is deviant concerning it, whether they comprise all the people of the earth, every one of them, or only some

[الباب السابع والعشرون في الشذوذ]

قال أبو محمد الشذوذ في اللغة التي خوطبنا بها هو الخروج عن الجملة، وهذه اللفظة في الشريعة موضوعة باتفاق على معنى ما، واختلف الناس في ذلك المعنى. فقالت طائفة: الشذوذ هو مفارقة الواحد من العلماء سائرهم، وهذا قول قد بينا بطلانه في باب الكلام في الإجماع من كتابنا هذا، والحمد لله رب العالمين، وذلك أن الواحد إذا خالف الجمهور إلى حق فهو محمود ممدوح، والشذوذ مذموم بإجماع، فمحال أن يكون المرء محمودا مذموما من وجه واحد، في وقت واحد، وممتنع أن يوجب شيء واحد الحمد والذم معا في وقت واحد، من وجه واحد، وهذا برهان ضروري، وقد خالف جميع الصحابة رضي الله عنهم أبا بكر في حرب أهل الردة، فكانوا في حين خلافهم مخطئين كلهم، فكان هو وحده المصيب، فبطل القول المذكور. وقال طائفة: الشذوذ هو أن يجمع العلماء على أمر ما، ثم يخرج رجل منهم عن ذلك القول الذي جامعهم عليه، وهذا قول أبي سليمان وجمهور أصحابنا، وهذا المعنى لو وجد نوع من أنواع الشذوذ، وليس حدا للشذوذ ولا رسما له، وهذا الذي ذكروا لو وجد شذوذ وكفر معا لما قد بينا في باب الكلام في الإجماع، أن من فارق الإجماع وهو يوقن أنه إجماع فقد كفر، مع دخول ما ذكر في الامتناع والمحال، وليت شعري متى تيقنا إجماع جميع العلماء كلهم في مجلس واحد فيتفقون، ثم يخالفهم واحد منهم، والذي نقول به وبالله تعالى التوفيق: إن حد الشذوذ هو مخالفة الحق، فكل من خالف الصواب في مسألة ما فهو فيها شاذ، وسواء كانوا أهل الأرض كلهم بأسرهم أو بعضهم، والجماعة والجملة هم أهل الحق، ولو لم يكن في الأرض منهم إلا واحد فهو الجماعة وهو الجملة. وقد أسلم أبو بكر وخديجة رضي الله عنهما فقط، فكانا هم الجماعة، وكان سائر أهل الأرض غيرهما وغير رسول الله صلى الله عليه وسلم أهل الشذوذ وفرقة وهذا الذي قلنا لا خلاف فيه بين العلماء، وكل من خالف فهو راجع إليه ومقربه شاء أو أبى، والحق هو الأصل

of them. The community and the whole are the people of truth. Even if there were only one of them on earth, he would be the community and he would be the whole. Abu Bakr and Khadija alone had embraced Islam, may Allah be pleased with them both; thus they were the community, while all the other people of the earth, apart from them and the Messenger of Allah—may Allah bless him and grant him peace ﷺ—were people of deviation and division. There is no disagreement among the scholars concerning what we have said. Everyone who disagrees ultimately returns to it and acknowledges it, whether he wishes to or not. And the truth is the foundation by which the heavens and the earth stand. Allah Most High said: {We did not create the heavens and the earth and what is between them except in truth. And the Hour is surely coming, so pardon with gracious pardon.} Since truth is the foundation, falsehood is a departure from it and a deviation from it. Since truth cannot be a deviation, and there is nothing but truth or falsehood, it is established that deviation is falsehood. This is a division whose initial premise is necessarily known, and a decisive, sufficient demonstration. Praise belongs to Allah. Whoever says that deviation consists in one person's separating from the community is to be asked: What do you say about two people's disagreeing with the community? If he says that this is deviation, he is to be asked about three people's disagreeing with the community. Then one more is to be added, one at a time, in this manner indefinitely. He must inevitably do one of two things: either identify some number as constituting deviation, while anything above it does not constitute deviation, thereby advancing an unsound statement for which there is no proof, thus becoming truly deviant; or persist until he departs from what is rationally intelligible and from the consensus of the Muslim community, thus likewise becoming truly deviant. He cannot avoid this. Success comes through Allah Most High. Thus, anyone whom demonstration from the scriptural text or from consensus known with certainty leads to some position, without his knowing of anyone before him who held that position, is obligated to hold the position to which the demonstration has led him. Whoever opposes him has opposed the truth, and whoever opposes the truth has disobeyed Allah Most High. The Most High said: {They said: None shall enter Paradise unless he is a Jew or a Christian. Those are their wishes. Say: Bring your demonstration, if you

الذي قامت السموات والأرض به قال الله تعالى: {وما خلقنا السماوات والأرض وما بينهما إلا بالحق وإن الساعة لآتية فاصفح الصفح الجميل} فإذا كان الحق هو الأصل فالباطل خروج عنه، وشذوذ منه فلما لم يجز أن يكون الحق شذوذا. وليس إلا حق أو باطل صح أن الشذوذ هو الباطل، وهذا تقسيم أوله ضروري وبرهان قاطع كاف ولله الحمد. ويسأل من قال: إن الشذوذ هو مفارقة الواحد للجماعة: ما تقول في خلاف الاثنين للجماعة؟ فإن قال: هو شذوذ، سئل عن خلاف الثلاثة للجماعة، ثم يزاد واحدا واحدا هكذا أبدا، فلا بد له من أحد أمرين: إما أن يجد عددا ما بأنه شذوذ، وإن ما زاد عليه ليس شذوذا، فيأتي بكلام فاسد لا دليل عليه، فيصير شاذا على الحقيقة، أو يتمادى حتى يخرج عن المعقول وعن إجماع الأمة فيصير شاذا على الحقيقة أيضا، ولا بد له من ذلك، وبالله تعالى التوفيق. فكل من أداه البرهان من النص أو الإجماع المتيقن إلى قول ما، ولم يعرف أحد قبله قال بذلك القول، ففرض عليه القول بما أدى إليه البرهان، ومن خالفه فقد خالف الحق، ومن خالف الحق فقد عصى الله تعالى، قال تعالى: {وقالوا لن يدخل الجنة إلا من كان هودا أو نصارى تلك أمانيهم قل هاتوا برهانكم إن كنتم صادقين} ولم يشترط تعالى في ذلك أن يقول به قائل قبل القائل به، بل أنكر تعالى ذلك على من قاله، إذ يقول عز وجل حاكيا عن الكفار منكرا عليهم أنهم قالوا: {ما سمعنا بهذا فى الملة الآخرة إن هذا إلا اختلاق} قال أبو محمد: ومن خالف هذا فقد أنكر على جميع التابعين، وجميع الفقهاء بعدهم، لأن المسائل التي تكلم فيها الصحابة رضي الله عنهم من الاعتقاد أو الفتيا فكلها محصور مضبوط، معروف عند أهل النقل من ثقات المحدثين وعلمائهم، فكل مسألة لم يرو فيها قول عن صاحب، لكن عن تابع فمن بعده، فإن ذلك التابع قال في تلك المسألة بقول لم يقله أحد قبله بلا شك، وكذلك كل مسألة لم يحفظ فيها قول عن صاحب ولا تابع، وتكلم فيها الفقهاء بعدهم فإن ذلك الفقيه قد قال في تلك المسألة بقول لم

are truthful.} The Most High did not stipulate that someone must have held that position before the person holding it. Rather, the Most High censured those who said this, when He, Mighty and Majestic, relates the unbelievers' words in censure of them: {We have not heard of this in the latter religion. This is nothing but a fabrication.} Abu Muhammed said: Whoever opposes this has thereby censured all the Successors and all the jurists after them. For the questions concerning belief or legal opinion on which the Companions, may Allah be pleased with them, spoke are all delimited, accurately recorded, and known to the transmitters who are trustworthy scholars of hadith. Thus, in every question on which no position is transmitted from a Companion, but only from a Successor or someone after him, that Successor undoubtedly expressed a position on that question that no one before him had expressed. Likewise, in every question on which no position has been preserved from either a Companion or a Successor, but on which the jurists after them spoke, that jurist expressed a position on that question that no one before him had expressed. Whoever masters this subject will find that Abu Hanifah, Malik, and al-Shafi'i have more than ten thousand questions on which no one before them expressed the positions they expressed. How, then, can these ignorant people permit the Successors, and then those after them, to express a position that no one before them had expressed, yet prohibit this to those after them, down to us and then until the Day of Resurrection? On the part of whoever says it, this is a claim without demonstration, conjecture in religion, and opposition to the consensus that this was permissible for those whom we have mentioned. The matter is therefore as we have stated. Whoever wishes to ascertain what we have mentioned should accurately record every question transmitted from any of the Companions, for they are the first of this Muslim community then let him turn his hand to every question outside those questions: the person issuing a legal opinion on it is expressing a position that no one before him expressed. There is, however, a difference between us and others: we express no position whatsoever on any question unless He Most High has already stated it in the Qur'an, or His Messenger, peace be upon him, has stated it in something authentically transmitted from him. That is sufficient reassurance and truth. As for those who oppose us, most of what they say on matters in which they have no predecessor comes

يقله أحد قبله، ومن ثقف هذا الباب فإنه يجد لأبي حنيفة ومالك والشافعي أزيد من عشرة آلاف مسألة لم يقل فيها أحد قبلهم بما قالوه، فكيف يسوغ هؤلاء الجهال للتابعين، ثم لمن بعدهم أن يقولوا قولا لم يقله أحد قبلهم، ويحرم ذلك على من بعدهم إلينا، ثم إلى يوم القيامة فهذا من قائله دعوى بلا برهان وتخرص في الدين، وخلاف الإجماع على جواز ذلك لمن ذكرنا، فالأمر كما ذكرنا، فمن أراد الوقوف على ما ذكرنا فليضبط كل مسألة جاءت عن أحد من الصحابة، فهم أول هذه الأمة، ثم ليضرب بيده إلى كل مسألة خرجت عن تلك المسائل، فإن المفتي فيها قائل بقول لم يقله أحد قبله، إلا أن بيننا نحن وبين غيرنا فرقا، وهو أننا لا نقول في مسألة قولا أصلا إلا وقد قاله تعالى في القرآن أو رسوله عليه السلام فيما صح عنه، وكفى بذلك أنسا وحقا. وأما من خالفنا فإن أكثر كلامه فيما لم يسبق إليه، فمن رأيه، وكفى بهذا وحشة. والحمد لله رب العالمين كثيرا وصلى الله على محمد خاتم النبيين وحسبنا الله ونعم الوكيل

from their own opinion. That is sufficient cause for unease. Abundant praise belongs to Allah, Lord of the worlds. May Allah bless Muhammed, the Seal of the Prophets. Allah is sufficient for us, and an excellent Trustee is He.[1][2][3]

[1] **Translator's note (L2066):** "Deviation" consistently renders shudhūdh, whose definition is the subject of this chapter; "the whole" renders al-jumla.

[2] **Translator's note (L2067):** "Essential definition" and "descriptive definition" distinguish the technical terms ḥadd and rasm. The awkward opening preserves the continuation across the segment boundary: a man from among the scholars departs from a position in which he had previously joined them.

[3] **Qur'an references (L2066):** Qur'an 15:85 (Al-Hijr); Qur'an 2:111 (Al-Baqarah); Qur'an 38:7 (Sad).

الباب 28: الصحابة والفقهاء الذين رويت عنهم الفتيا

Chapter 28: Companions and Later Jurists Who Gave Legal Opinions

Ibn Ḥazm · Arabic–English parallel edition

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[الباب الثامن والعشرون في تسمية الصحابة الذين رويت عنهم الفتيا وتسمية الفقهاءالمذكورين في الاختلاف بعد عصر الصحابة رضي الله عنهم]

قال أبو محمد: أما الصحابة رضي الله عنهم فهو كل من جالس النبي صلى الله عليه وسلم ولو ساعة وسمع منه ولو كلمة فما فوقها أو شاهد منه عليه السلام أمرا يعيه، ولم يكن من المنافقين الذين اتصل نفاقهم، واشتهر حتى ماتوا على ذلك، ولا مثل من نفاه عليه السلام باستحقاقه كهيت المخنث ومن جرى مجراه، فمن كان كما وصفنا أولا فهو صاحب، وكلهم عدل إمام فاضل رضي، فرض علينا توقيرهم وتعظيمهم، وأن نستغفر لهم ونحبهم، وتمرة يتصدق بها أحدهم أفضل من صدقة أحدنا بما يملك وجلسة من الواحد منهم مع النبي صلى الله عليه وسلم أفضل من عبادة أحدنا دهره كله وسواء كان من ذكرنا على عهده عليه السلام صغيرا أو بالغا، فقد كان النعمان بن بشير، وعبد الله بن الزبير، والحسن والحسين ابنا علي رضي الله عنهم أجمعين من أبناء العشر فأقل إذ مات النبي صلى الله عليه وسلم وأما الحسين فكان حينئذ ابن ست سنين إذ مات الرسول صلى الله عليه وسلم وكان محمود بن الربيع ابن خمس سنين إذ مات النبي صلى الله عليه وسلم وهو يعقل مجة مجها النبي صلى الله عليه وسلم في وجهه من ماء بئر دارهم وكلهم معدودون في خيار الصحابة، مقبولون فيما رووا عنه عليه السلام أتم القبول، وسواء في ذلك الرجال والنساء والعبيد والأحرار وأما من أدرك رسول الله صلى الله عليه وسلم بعقله وسنه إلا أنه لم يلقه فليس من الصحابة ولكنه من التابعين، وكأبي عثمان النهدي، وأبي رجاء العطاردي، وشريح بن الحارث القاضي، وعلقمة، والأسود، ومسروق، وقيس بن أبي حازم، والرحيل الجعفي، ونباتة الجعفي، وعمرو

[Chapter Twenty-Eight: Naming the Companions from Whom Legal Opinions Have Been Transmitted, and Naming the Jurists Mentioned in Disagreements after the Age of the Companions, May Allah Be Pleased with Them]

Abu Muhammed said: As for the Companions, may Allah be pleased with them, a Companion is anyone who sat with the Prophet ﷺ, even for an hour, and heard from him even a single word or more, or witnessed something done by him, peace be upon him, that he comprehended, provided that he was not among the hypocrites whose hypocrisy persisted and became notorious until they died in that condition, nor like someone whom he, peace be upon him, banished because he deserved it, such as Hit the effeminate man and others of his kind. Anyone who meets our initial description is a Companion. Every one of them is upright, an exemplary leader, virtuous, and well-pleasing. We are obligated to honor and revere them, seek forgiveness for them, and love them. A single date given in charity by one of them is better than one of us giving everything he owns in charity, and a single sitting by one of them with the Prophet ﷺ is better than one of us worshipping throughout his entire lifetime. It makes no difference whether the person we have described was a child or an adult during his lifetime, peace be upon him. Al-Nu'man ibn Bashir, 'Abd Allah ibn al-Zubayr, and al-Hasan and al-Husayn, the two sons of 'Ali, may Allah be pleased with them all, were ten years old or younger when the Prophet ﷺ died. As for al-Husayn, he was then six years old when the Messenger ﷺ died, and Mahmud ibn al-Rabi' was five years old when the Prophet ﷺ died, and he remembered a mouthful of water from the well of their house that the Prophet ﷺ had squirted into his face. All of them are counted among the finest Companions, and what they transmitted from him, peace be upon him, is accepted with the fullest acceptance. Men and women, enslaved people and free people are alike in this respect. As for someone who lived in the time of the Messenger of Allah ﷺ and was of an age and mental capacity to comprehend him, but did not meet him, he is not one of the Companions, but one of the Successors. Examples are Abu 'Uthman al-Nahdi, Abu Raja' al-'Utaridi, Shurayh ibn al-Harith the judge, 'Alqamah, al-Aswad, Masruq, Qays ibn Abi Hazim,

al-Ruhayl al-Ju‘fi, Nubatah al-Ju‘fi, ‘Amr ibn Maymun, Salman ibn Rabi‘ah al-Bahili, Zayd ibn Suhan, Abu Maryam al-Hanafi, Ka‘b ibn Sur, ‘Amr ibn Yathribi, and others—numbers whom none but their Creator, Mighty and Majestic, can enumerate. Among these were people who issued legal opinions in the days of ‘Umar ibn al-Khattab and adjudicated between people in the time of ‘Umar and ‘Uthman. As for someone who apostatized after the Prophet ﷺ, having met him and embraced Islam, then returned to Islam and became upright in his conduct, such as al-Ash‘ath ibn Qays, ‘Amr ibn Ma‘di Karib, and others, his companionship with him is counted, and he is undoubtedly included among the Companions, because the Messenger of Allah ﷺ said: “You have embraced Islam with the good you previously performed.” They are all upright, virtuous, and among the people of Paradise. Allah Most High said: {Muhammed is the Messenger of Allah, and those with him are stern toward the unbelievers, merciful among themselves. You see them bowing and prostrating, seeking bounty from Allah and good pleasure. Their mark is on their faces from the trace of prostration. That is their likeness in the Torah; and their likeness in the Gospel is like a crop that puts forth its shoots, then strengthens them, then grows thick and stands upright on its stalks, delighting the sowers, so that through them He may enrage the unbelievers. Allah has promised those among them who believe and perform righteous deeds forgiveness and a tremendous reward.} And the Most High said: {What is the matter with you that you do not spend in the way of Allah, when to Allah belongs the inheritance of the heavens and the earth? Those among you who spent before the conquest and fought are not equal: they are greater in rank than those who spent afterward and fought. Yet to each Allah has promised the fairest reward. And Allah is fully aware of what you do.} And the Most High said: {Indeed, those for whom the fairest reward has already gone forth from Us—they will be kept far from it. * They will not hear its faint sound, and they, amid what their souls desire, abiding forever. * The greatest terror shall not grieve them, and the angels shall meet them: ‘This is your day which you were promised.’” Abu Muhammed said: These are the promises of Allah Most High, and the fulfillment of Allah’s promise is guaranteed. All of them who died as believers had believed and performed righteous deeds. The Messenger of Allah ﷺ said: “Leave my Companions

بن ميمون، وسلمان بن ربيعة الباهلي، وزيد بن صوحان، وأبي مريم الحنفي، وكعب بن سور، وعمرو بن يثربي وغيرهم، وأعداد لا يحصهم إلا خالقهم عز وجل، ومن هؤلاء من أفتى أيام عمر بن الخطاب وقضى بين الناس زمن عمر وعثمان وأما من ارتد بعد النبي صلى الله عليه وسلم وبعد أن لقيه وأسلم ثم راجع الإسلام وحسنت حاله كالأشعث بن قيس، وعمرو بن معدي كرب، وغيرهما، فصحبته له معدودة، وهو بلا شك من جملة الصحابة لقول رسول الله صلى الله عليه وسلم أسلمت على ما سلف لك من خير وكلهم عدول فاضل من أهل الجنة قال الله تعالى {محمد رسول لله ولذين معه أشدآء على لكفار رحمآء بينهم تراهم ركعا سجدا يبتغون فضلا من لله ورضوانا سيماهم في وجوههم من أثر لسجود ذلك مثلهم في لتوراة ومثلهم في لإنجيل كزرع أخرج شطأه فآزره فستغلظ فستوى على سوقه يعجب لزراع ليغيظ بهم لكفار وعد لله لذين آمنوا وعملوا لصالحات منهم مغفرة وأجرا عظيما} وقال تعالى {وما لكم ألا تنفقوا في سبيل لله ولله ميراث لسماوات ولأرض لا يستوي منكم من أنفق من قبل لفتح وقاتل أولئك أعظم درجة من لذين أنفقوا من بعد وقاتلوا وكلا وعد لله لحسنى ولله بما تعملون خبير} وقال تعالى {إن لذين سبقت لهم منا لحسنى أولئك عنها مبعدون * لا يسمعون حسيسها وهم في ما شتهت أنفسهم خالدون * لا يحزنهم لفزع لأكبر وتتلقاهم لملائكة هذا يومكم لذي كنتم توعدون} قال أبو محمد هذه مواعيد الله تعالى، ووعد الله مضمون تمامه، وكلهم ممن مات مؤمنا قد آمن وعمل الصالحات وقال رسول الله صلى الله عليه وسلم دعوا لي أصحابي فلو كان لأحدكم مثل أحد ذهبا فأنفقه في سبيل الله ما بلغ مد أحدهم ولا نصيفه وقد قال قوم إنه لا يكون صاحبا من رأى النبي صلى الله عليه وسلم مرة واحدة لكن من تكررت صحبه قال أبو محمد: وهذا خطأ بيقين لأنه قول بلا برهان، ثم نسأل قائله عن حد التكرار الذي ذكر، وعن

to me. Were any one of you to possess gold equal to Mount Uhud and spend it in the path of Allah, he would not attain the measure of one mudd given by any of them, nor even half of it." Some people have said that someone who saw the Prophet ﷺ only once is not a Companion, but only someone whose companionship was repeated. Abu Muhammed said: This is certainly erroneous, because it is a statement without demonstration. We then ask its proponent about the extent of the repetition he mentioned and the duration of time he stipulated. If he sets a limit for that, he compounds his arbitrary assertion of falsehood; and if he sets no limit for it, he is speaking about something of which he has no knowledge. That suffices as misguidance. Another demonstration of the invalidity of his statement is that, in the language, the designation of companionship applies to anyone whom some circumstance has brought together with another in any situation, for he has kept his company in it. Since someone who saw the Prophet ﷺ without opposing him or denying his prophethood kept his company at that time, he must be called a Companion. As for the Successors and those after them, we have only the outward appearances of their circumstances, since there is no testimony from Allah Most High that any one of them will attain salvation. Not every one of the Successors and those after them is upright. Their circumstances must therefore be examined, and anyone whose excellence and knowledge become apparent is accepted as a transmitter. Abu Muhammed said: The Messenger of Allah ﷺ campaigned against Hawazin at Hunayn with twelve thousand fighting men, all of whom fall under the designation of companionship. He then campaigned at Tabuk with more than that. Delegations came to him from all the clans of all the Arab tribes, and every one of them was a Companion. Their number undoubtedly amounted to more than thirty thousand people. Delegations of jinn also came to him ﷺ and embraced Islam. The designation of companionship properly applied to them, and they received from him ﷺ the Qur'an and the prescribed laws of Islam. And all those we have mentioned who met the Prophet ﷺ and received instruction from him— every individual among them, their humans and their jinn, undoubtedly gave legal opinions to his household, his neighbors, and his people. This is something known necessarily. Yet, after exhaustive investigation, legal opinions concerning acts of worship and legal rulings have been

مدة الزمان الذي اشترط، فإن حد في ذلك حدا كان زائدا في التحكم بالباطل، وإن لم يحد في ذلك حدا كان قائلا بما لا علم له به، وكفى بهذا ضلالا، وبرهان بطلان قوله أيضا، إن اسم الصحبة في اللغة إنما هو لمن ضمته مع آخر حالة ما فإنه قد صحبه فيها فلما كان من رأى النبي صلى الله عليه وسلم وهو غير منابذ له ولا جاحد لنبوته قد صحبه في ذلك الوقت، وجب أن يسمى صاحبا، وأما التابعون ومن بعدهم فإنما لنا ظواهر أحوالهم، إذ لا شهادة من الله تعالى لأحد منهم بالنجاة، وليس كل التابعين فمن بعدهم عدلا، فإنما يراعى أحوالهم، فمن ظهر منه الفضل والعلم فهو مقبول النقل قال أبو محمد وقد غزا رسول الله صلى الله عليه وسلم هوازن بحنين في اثني عشر ألف مقاتل كلهم يقع عليهم اسم الصحبة، ثم غزا تبوك في أكثر من ذلك، ووفد عليه جميع البطون من جميع قبائل العرب وكلهم صاحب، وعددهم بلا شك يبلغ أزيد من ثلاثين ألف إنسان ووفد عليه صلى الله عليه وسلم وفود الجن فأسلموا وصح لهم اسم الصحبة وأخذوا عنه صلى الله عليه وسلم القرآن وشرائع الإسلام وكل من ذكرنا ممن لقي النبي صلى الله عليه وسلم وأخذ عنه فكل امرىء منهم إنسهم وجنهم فلا شك أفتى أهله وجيرانه وقومه. هذا أمر يعلم ضرورة ثم لم ترو الفتيا في العبادات والأحكام إلا عن مائة ونيف وثلاثين منهم فقط من رجل وامرأة بعد التقصي الشديد، فكيف يسع من له رمق من عقل، أو مسكة من دين وشعبة من حياء أن يدعي عليهم الإجماع فيما لا يوقن أن جميعهم قال به وعلمه، لا سيما وإنما ننازعهم في دعوى الإجماع عليهم في الخطأ المخالف لكلام الله عز وجل في القرآن والثابت عن رسول الله صلى الله عليه وسلم فهذا هو العجب وفيما ذكرنا يقين العلم بكذب من ادعى الإجماع على ما يمكن أن يخفى من أحكام القرآن والسنن فكيف على خلاف القرآن والسنن. قال أبو محمد: وهذا حين نذكر إن شاء الله تعالى اسم كل من روى عن مسألة فما فوقها من الفتيا من

transmitted from only a hundred and thirty-odd of them, men and women. How, then, can anyone with a vestige of reason, a hold upon religion, or a trace of modesty presume to attribute consensus to them concerning something that he does not know with certainty they all professed and knew? Especially since our dispute with them concerns their claim that these people reached consensus upon an error contrary to the words of Allah, Mighty and Majestic, in the Qur'an and to what is established from the Messenger of Allah ﷺ. This indeed is astonishing! What we have mentioned provides certain knowledge of the falsehood of anyone who claims consensus concerning rulings of the Qur'an and the transmitted prophetic practices that might remain unknown; how much more so concerning something contrary to the Qur'an and the transmitted prophetic practices! Abu Muhammed said: Now is the time for us to mention, if Allah Most High wills, the name of every Companion—may Allah be pleased with them—from whom a legal opinion on one question or more has been transmitted. If any have escaped us, they can only be very few, from whom likewise only one or two questions have been transmitted. Success comes through Allah Most High.

Those Companions—may Allah be pleased with them—from whom many legal opinions have been transmitted:

Aishah, Mother of the Believers; Umar ibn al-Khattab; his son Abd Allah; Ali ibn Abi Talib; Abd Allah ibn al-Abbas; Abd Allah ibn Masud; Zayd ibn Thabit. These are seven, and a substantial volume could be compiled from the legal opinions of each one of them. Abu Bakr Muhammed ibn Musa ibn Yaqub ibn the Commander of the Believers al-Mamun compiled the legal opinions of Abd Allah ibn al-Abbas in twenty books. The aforementioned Abu Bakr is one of the leading authorities of Islam in learning and hadith.

Those of them from whom a moderate number of legal opinions have been transmitted—may Allah be pleased with them:

Umm Salamah, Mother of the Believers; Anas ibn Malik; Abu Said al-Khudri; Abu Hurayrah; Uthman ibn Affan; Abd Allah ibn Amr ibn al-As; Abd Allah ibn al-Zubayr; Abu Musa al-Ashari; Sad ibn Abi Waqqas; Salman al-Farisi; Jabir ibn Abd Allah; Muadh ibn Jabal; and Abu Bakr al-Siddiq. These are only

الصحابة رضي الله عنهم وما فات منهم إن كان فات إلا يسيرا جدا ممن لم يرو عنه أيضا إلا مسألة واحدة أو مسألتان وبالله تعالى التوفيق. المكثرون من الصحابة رضي الله عنهم فيما روي عنهم من الفتيا عائشة أم المؤمنين، عمر بن الخطاب، ابنه عبد الله، علي بن أبي طالب، عبد الله بن العباس، عبد الله بن مسعود، زيد بن ثابت، فهم سبعة يمكن أن يجمع من فتيا كل واحد منهم سفر ضخم، وقد جمع أبو بكر محمد بن موسى بن يعقوب بن أمير المؤمنين المأمون فتيا عبد الله بن العباس في عشرين كتابا، وأبو بكر المذكور أحد أئمة الإسلام في العلم والحديث. والمتوسطون منهم فيما روي عنهم من الفتيا رضي الله عنهم أم سلمة أم المؤمنين، أنس بن مالك، أبو سعيد الخدري، أبو هريرة، عثمان بن عفان، عبد الله بن عمرو بن العاص، عبد الله بن الزبير، أبو موسى الأشعري، سعد بن أبي وقاص، سلمان الفارسي، جابر بن عبد الله، معاذ بن جبل، وأبو بكر الصديق. فهم ثلاثة عشر فقط. يمكن أن يجمع من فتيا كل امرىء منهم جزء صغير جدا ويضاف أيضا إليهم طلحة، الزبير، عبد الرحمن بن عوف، عمران بن الحصين، أبو بكرة، عبادة بن الصامت، معاوية بن أبي سفيان. والباقون منهم رضي الله عنهم مقلون في الفتيا لا يروي الواحد منهم إلا المسألة والمسألتان والزيادة اليسيرة على ذلك فقط يمكن أن يجمع من فتيا جميعهم جزء صغير فقط بعد التقصي والبحث وهم رضي الله عنهم أبو الدرداء، أبو اليسر، أبو سلمة المخزومي، أبو عبيدة بن الجراح، سعيد بن زيد، الحسن والحسين ابنا علي بن أبي طالب، النعمان بن بشير، أبو مسعود، أبي بن كعب، أبو أيوب، أبو طلحة، أبو ذر، أم عطية، صفية أم المؤمنين، حفصة أم المؤمنين، أم حبيبة أم المؤمنين، أسامة بن زيد، جعفر بن أبي طالب، البراء بن عازب، قرظة بن كعب، أبو عبد الله البصري، نافع أخو أبي بكرة لأمه، المقداد بن الأسود، أبو السنابل بن بعكك، الجارود العبدي، ليلى بنت قائف، أبو محذورة، أبو

thirteen, and a very small fascicle could be compiled from the legal opinions of each one of them. To them are also added: Talhah; al-Zubayr; Abd al-Rahman ibn Awf; Imran ibn al-Husayn; Abu Bakrah; Ubadah ibn al-Samit; Muawiyah ibn Abi Sufyan.

The remainder of them—may Allah be pleased with them—gave few legal opinions. Each transmits only one question, or two questions, or a slight addition to that. After exhaustive investigation and searching, only a small fascicle could be compiled from the legal opinions of all of them together. They are—may Allah be pleased with them:

Abu al-Darda; Abu al-Yusr; Abu Salamah al-Makhzumi; Abu Ubaydah ibn al-Jarrah; Said ibn Zayd; al-Hasan and al-Husayn, the two sons of Ali ibn Abi Talib; al-Numan ibn Bashir; Abu Masud; Ubayy ibn Kab; Abu Ayyub; Abu Talhah; Abu Dharr; Umm Atiyyah; Safiyyah, Mother of the Believers; Hafsah, Mother of the Believers; Umm Habibah, Mother of the Believers; Usamah ibn Zayd; Jafar ibn Abi Talib; al-Bara ibn Azib; Qarazah ibn Kab; Abu Abd Allah al-Basri; Nafi, Abu Bakrah's brother through their mother; al-Miqdad ibn al-Aswad; Abu al-Sanabil ibn Bakak; al-Jarud al-Abdi; Layla bint Qaif; Abu Mahdhurah; Abu Shurayh al-Kabi; Abu Barzah al-Aslami; Asma bint Abi Bakr; Umm Sharik; al-Hawla bint Tuwayt; Usayd ibn al-Hudayr; al-Dahhak ibn Qays; Habib ibn Maslamah; Abd Allah ibn Unays; Hudhayfah ibn al-Yaman; Thumamah ibn Uthal; Ammar ibn Yasir; Amr ibn al-As; Abu al-Ghadiyah al-Juhani al-Sulami; Umm al-Darda the Elder; al-Dahhak ibn Khalifah al-Mazini; al-Hakam ibn Amr al-Ghifari; Wabisah ibn Mabad al-Asadi; Abd Allah ibn Jafar; Awf ibn Malik; Adi ibn Hatim; Abd Allah ibn Abi Awfa; Abd Allah ibn Salam; Amr ibn Abasah; Attab ibn Asid; Uthman ibn Abi al-As; Abd Allah ibn Sarjis; Abd Allah ibn Rawahah; Aqil ibn Abi Talib; Aidh ibn Amr; Abu Qatadah; Abd Allah ibn Mamar al-Adawi; Umayr ibn Sad; Abd Allah ibn Abi Bakr al-Siddiq; Abd al-Rahman ibn Abu Bakr al-Siddiq; ʿAtikah daughter of Zayd ibn ʿAmr; ʿAbd Allah ibn ʿAwf al-Zuhri; Saʿd ibn Muʿadh; Abu Munib; Saʿd ibn ʿUbadah; Qays ibn Saʿd; ʿAbd al-Rahman ibn Sahl; Samurah ibn Jundub; Sahl ibn Saʿd al-Saʿidi; Muʿawiyah ibn Muqarrin; Suwayd ibn Muqarrin; Muʿawiyah ibn al-Hakam; Sahlah daughter of Suhayl; Abu Hudhayfah ibn ʿUtbah; Salamah ibn al-Akwaʿ; Zayd ibn Arqam; Jarir ibn

شريح الكعبي، أبو برزة الأسلمي، أسماء بنت أبي بكر، أم شريك الحولاء بنت تويت، أسيد بن الحضير، الضحاك بن قيس، حبيب بن مسلمة، عبد الله بن أنيس، حذيفة بن اليمان، ثمامة بن أثال. عمار بن ياسر، عمرو بن العاص، أبو الغادية الجهني السلمي، أم الدرداء الكبرى، الضحاك بن خليفة المازني، الحكم بن عمرو الغفاري، وابصة بن معبد الأسدي، عبد الله بن جعفر، عوف بن مالك، عدي بن حاتم، عبد الله بن أبي أوفى. عبد الله بن سلام، عمرو بن عبسة، عتاب بن أسيد، عثمان بن أبي العاص، عبد الله بن سرجس، عبد الله بن رواحة، عقيل بن أبي طالب، عائذ بن عمرو، أبو قتادة، عبد الله بن معمر العدوي، عمير بن سعد، عبد الله بن أبي بكر الصديق، عبد الرحمن بن أبي بكر الصديق، عاتكة بنت زيد بن عمرو، عبد الله بن عوف الزهري، سعد بن معاذ، أبو منيب، سعد بن عبادة، قيس بن سعد، عبد الرحمن بن سهل، سمرة بن جندب، سهل بن سعد الساعدي، معاوية بن مقرن، سويد بن مقرن، معاوية بن الحكم، سهلة بنت سهيل، أبو حذيفة بن عتبة، سلمة بن الأكوع، زيد بن أرقم، جرير بن عبد الله البجلي، جابر بن سمرة، جويرية أم المؤمنين، حسان بن ثابت، حبيب بن عدي، قدامة بن مظعون، عثمان بن مظعون، ميمونة أم المؤمنين، مالك بن الحويرث، أبو أمامة الباهلي، محمد بن مسلمة، خباب بن الأرت، خالد بن الوليد، ضمرة بن العيص، طارق بن شهاب، ظهير بن رافع رافع بن خديج فاطمة بنت رسول الله صلى الله عليه وسلم فاطمة بنت قيس هشام بن حكيم بن حزام أبوه حكم بن حزام، شرحبيل بن السمط، أم سليم دحية بن خليفة الكلبي، ثابت بن قيس بن الشماس ثوبان مولى رسول الله صلى الله عليه وسلم سرق المغيرة بن شعبة بريدة بن الحصيب الأسلمي، رويفع بن ثابت، أو حميدة، أو أسيد، فضالة بن عبيد، رجل يعرف بأبي محمد روينا عنه وجوب الوتر هو من الأنصار اسمه مسعود بن أوس نجاري بدري زينب بنت أم المؤمنين، أم سلمة، عتبة بن مسعود، بلال المؤذن، مكرز، عرفة بن الحارث، سيار بن روح

ʿAbd Allah al-Bajali; Jabir ibn Samurah; Juwayriyah, Mother of the Believers; Hassan ibn Thabit; Habib ibn ʿAdi; Qudamah ibn Mazʿun; ʿUthman ibn Mazʿun; Maymunah, Mother of the Believers; Malik ibn al-Huwayrith; Abu Umamah al-Bahili; Muhammed ibn Maslamah; Khabbab ibn al-Aratt; Khalid ibn al-Walid; Damrah ibn al-ʿIs; Tariq ibn Shihab; Zuhayr ibn Rafiʿ; Rafiʿ ibn Khadij; Fatimah, daughter of the Messenger of Allah, may Allah bless him and grant him peace ﷺ; Fatimah daughter of Qays; Hisham ibn Hakim ibn Hizam; his father, Hakam ibn Hizam; Shurahbil ibn al-Simt; Umm Sulaym; Dihyah ibn Khalifah al-Kalbi; Thabit ibn Qays ibn al-Shammas; Thawban, the freedman of the Messenger of Allah, may Allah bless him and grant him peace ﷺ; Suraq; al-Mughirah ibn Shuʿbah; Buraydah ibn al-Husayb al-Aslami; Ruwayfiʿ ibn Thabit, or Humaydah, or Usayd; Fadalah ibn ʿUbayd; a man known as Abu Muhammed, from whom we have transmitted that the odd-numbered prayer is obligatory—he was one of the Helpers, his name was Masʿud ibn Aws, he belonged to the Najjar clan, and he participated at Badr; Zaynab, daughter of the Mother of the Believers Umm Salamah; ʿUtbah ibn Masʿud; Bilal, the caller to prayer; Mikraz; ʿArafah ibn al-Harith; Sayyar ibn Rawh, or Rawh ibn Sayyar; Abu Saʿid ibn al-Muʿalla; al-ʿAbbas ibn ʿAbd al-Muttalib; Busr ibn Abi Artah, also called Busrah ibn Artah; Suhayb ibn Sinan; Umm Ayman; Umm Yusuf; Maʿiz; the Ghamidi woman. As for the jurists among the Successors from whom legal opinions have been transmitted, and those who came after them, we shall, if Allah Most High wills, mention those among them who are known, arranged by the celebrated cities, specifically in the early days of Islam. As for those after that period, none can enumerate them except Allah, mighty and majestic.

Mecca—may it be exalted by Allah.

ʿAta' ibn Rabah, the client of Umm Kurz al-Khuzaʿiyyah; Tawus ibn Kaysan al-Farisi; al-Aswad, father of ʿUthman ibn al-Aswad; Mujahid ibn Jabr; ʿUbayd ibn ʿUmar al-Laythi; his son ʿAbd Allah ibn ʿUbayd; ʿAmr ibn Dinar; ʿAbd Allah ibn Abi Mulaykah; ʿAbd Allah ibn Sabit; ʿIkrimah, the client of Ibn ʿAbbas. These were among the associates of Ibn ʿAbbas, may Allah be pleased with them. They also learned from Ibn ʿUmar, the Mother of the Believers ʿA'ishah, ʿAli, and Jabir. Then came Abu al-Zubayr al-Makki, ʿAbd Allah ibn

أو روح بن سيار، أبو سعيد بن المعلى، العباس بن عبد المطلب، بسر بن أبي أرطاة، ويقال بسرة بن أرطاة صهيب بن سنان، أم أيمن، أم يوسف، ماعز، الغامدية. وأما فقهاء التابعين الذين روي عنهم الفتيا فمن بعدهم فنحن إن شاء الله تعالى نذكر من عرف منهم على البلاد المشهورة في صدر الإسلام خاصة، وأما بعد ذلك فلا يحصيهم إلا الله عز وجل. مكة أعزها الله عطاء بن رباح مولى أم كرز الخزاعية، طاوس بن كيسان الفارسي، والأسود والد عثمان بن الأسود، مجاهد بن جبر، عبيد بن عمر الليثي، ابنه عبد الله بن عبيد، عمرو بن دينار، عبد الله بن أبي مليكة، عبد الله بن سابط، عكرمة مولى ابن عباس وهؤلاء من أصحاب ابن عباس رضي الله عنهم، وقد أخذوا أيضا عن ابن عمر، وأم المؤمنين عائشة، وعلي جابر، ثم أبو الزبير المكي، وعبد الله بن خالد بن أسيد بن أبي العيص بن أمية، وعبد الله بن طاوس، ثم بعدهم عبد الملك بن عبد العزيز بن جريج، سفيان بن عيينة وكان أكثر فتياه في المناسك، وكان يتوقف في الطلاق وبعدهم مسلم بن خالد الزنجي، سعيد بن سالم القداح؛ وبعدهما محمد بن إدريس الشافعي؛ ثم ابن عمه إبراهيم بن محمد الشافعي، أبو بكر عبد الله، ابن الزبير الحميدي، أبو الوليد موسى بن أبي الجارود، ثم أبو بكر بن أبي مسرة، ثم غلب عليهم تقليد الشافعي إلا من لا نقف الآن على اسمه منهم المدينة أعزها الله وحرسها سعيد بن المسيب المخزومي وكان على بنت أبي هريرة وأخذ عنه كثيرا وعن سعد بن أبي وقاص وغيره، عروة بن الزبير بن العوام؛ القسم بن محمد بن أبي بكر الصديق؛ وأخذ عن عائشة أم المؤمنين؛ عبيد الله بن عبد الله بن عتبة بن مسعود الهذلي وأخذ عن ابن عباس؛ خارجة بن زيد بن ثابت وأخذ عن أبيه أبو بكر بن عبد الرحمن بن الحارث بن هشام المخزومي؛ سليمان بن يسار، أخذ عن أمي المؤمنين عائشة وأم سلمة وعن غيرهما من الصحابة؛

Khalid ibn Usayd ibn Abi al-ʿIs ibn Umayyah, and ʿAbd Allah ibn Tawus. Then, after them, came ʿAbd al-Malik ibn ʿAbd al-ʿAziz ibn Jurayh; Sufyan ibn ʿUyaynah, whose legal opinions concerned pilgrimage rites for the most part, and who would refrain from giving a ruling on divorce. After them came Muslim ibn Khalid al-Zanji; Saʿid ibn Salim al-Qaddah. After these two came Muhammed ibn Idris al-Shafiʿi; then his paternal cousin Ibrahim ibn Muhammed al-Shafiʿi; Abu Bakr ʿAbd Allah ibn al-Zubayr al-Humaydi; Abu al-Walid Musa ibn Abi al-Jarud; then Abu Bakr ibn Abi Masarrah. Thereafter, adherence to al-Shafiʿi's authority without independent examination predominated among them, except for some whose names we cannot presently ascertain.

Medina—may Allah exalt and protect it.

Saʿid ibn al-Musayyab al-Makhzumi, who was married to Abu Hurayrah's daughter and learned much from him, as well as from Saʿd ibn Abi Waqqas and others; ʿUrwah ibn al-Zubayr ibn al-ʿAwwam; al-Qasm ibn Muhammed ibn Abi Bakr al-Siddiq, who learned from ʿA'ishah, Mother of the Believers; ʿUbayd Allah ibn ʿAbd Allah ibn ʿUtbah ibn Masʿud al-Hudhali, who learned from Ibn ʿAbbas; Kharijah ibn Zayd ibn Thabit, who learned from his father; Abu Bakr ibn ʿAbd al-Rahman ibn al-Harith ibn Hisham al-Makhzumi;

Sulayman ibn Yasar, who learned from the two Mothers of the Believers, ʿA'ishah and Umm Salamah, and from other Companions.[1][2][3][4][5][6][7][8][9][10]

[1] **Translator's note (L2074):** The unvocalized personal name هيت is rendered Hit; its precise vocalization is not specified in the supplied text.

[2] **Translator's note (L2077):** The Qur'anic quotations contain repeated apparent transcription losses of initial alifs, including لله for الله and لذين for الذين. The English follows the words indicated by these defective spellings; the supplied Arabic itself has not been reproduced or silently amended. The description عدول فاضل combines a plural adjective with a singular one. Both are rendered predicatively as "upright, virtuous," preserving the apparent sense while noting the grammatical irregularity.

[3] **Translator's note (L2078):** The opening word is truncated, continuing the Qur'anic quotation from the preceding segment. The translation follows the recoverable sense without adding the preceding text. A mudd is a measure of capacity; here it denotes the quantity given in charity. The segment ends within the definition of companionship; its sentence continues in the next segment.

[4] **Translator's note (L2081):** The source reads "sakhm," apparently a transcription error for "dakhm," meaning "substantial" or "large," used here of the volume.

[5] **Translator's note (L2083):** The source literally says that each person "transmits" one or two questions, although the surrounding discussion concerns legal opinions transmitted from them. The names "Layla bint Qaif," "Usayd ibn al-Hudayr," and "Abu al-Ghadiyah al-Juhani al-Sulami" reproduce the supplied readings; potentially anomalous name forms and the paired affiliations have not been silently corrected.

[6] **Translator's note (L2086):** The opening name completes the preceding segment's "ʿAbd al-Rahman ibn." The text gives "Habib ibn ʿAdi" and calls Hisham's father "Hakam ibn Hizam," although it has just named Hisham as the son of Hakim ibn Hizam. These readings have been preserved. The unpunctuated sequence "Ruwayfiʿ ibn Thabit, or Humaydah, or Usayd" leaves the relationship of the alternative names uncertain; the translation preserves that uncertainty. Suraq is treated as a personal name in this list; the unvocalized spelling could otherwise be read as a verb.

[7] **Translator's note (L2087):** The blessing in the heading continues with "Allah" in the next segment; English word order has been arranged to allow the segments to join.

[8] **Translator's note (L2088):** The supplied text reads "ʿUbayd ibn ʿUmar"; this has been retained without correcting the name. The final name continues as "ibn Dinar" in the next segment.

[9] **Translator's note (L2089):** The sequence "ʿAli Jabir" has no conjunction between the names; it is understood here as two names in the list of teachers. The supplied spelling is "al-Qasm," rather than the expected "al-Qasim"; the supplied form has been retained. "Adherence to al-Shafiʿi's authority without independent examination" renders the technical term taqlid.

L2090–2094

These are the seven celebrated jurists of Medina. Those who also issued legal opinions there included Aban ibn ʿUthman ibn ʿAffan, who learned from his father; ʿAbd Allah and Salim, the two sons of ʿAbd Allah ibn ʿUmar; Abu Salamah ibn ʿAbd al-Rahman ibn ʿAwf; ʿAli ibn al-Husayn ibn ʿAli ibn Abi Talib; his son Muhammed, who learned from Jabir; Abu Bakr ibn Sulayman Abi Khaythamah al-ʿAdawi, of the ʿAdi clan of Quraysh; Nafiʿ, the client of Ibn ʿUmar, from whom we have transmitted approximately ten questions with his legal opinions; ʿAmrah daughter of ʿAbd al-Rahman ibn Saʿd ibn Zurarah, the brother of Abu Umamah Asʿad ibn Zurarah, may Allah be pleased with him. Sufyan mentioned that she was consulted for legal opinions concerning sales. She learned from ʿA'ishah and from the women Companions among the Helpers. Also Marwan ibn al-Hakam, before he assumed power in Syria; he was below these in standing. After them came Abu Bakr ibn Muhammed ibn ʿAmr ibn Hazm and his two sons, Muhammed and ʿAbd Allah; ʿAbd Allah ibn ʿAmr ibn ʿUthman ibn ʿAffan and his son Muhammed; ʿAbd Allah and al-Hasan, the two sons of Muhammed ibn al-Hanafiyyah, who was Muhammed ibn ʿAli ibn Abi Talib; Jaʿfar ibn Muhammed ibn ʿAli ibn al-Husayn ibn ʿAli ibn Abi Talib; ʿAbd al-Rahman ibn al-Qasim ibn Muhammed ibn Abi Bakr al-Siddiq; Musʿab ibn Muhammed ibn Shurahbil al-ʿAbdari; Muhammed ibn al-Munkadir al-Taymi; Muhammed ibn Muslim ibn Shihab al-Zuhri, whose legal opinions Muhammed ibn Ahmad ibn Mufarrij collected in three substantial volumes arranged according to the chapters of jurisprudence; ʿAbd Allah ibn al-Hasan ibn al-Husayn ibn ʿAli ibn Abi Talib; Yahya ibn Saʿid ibn Qays al-Ansari; Abu al-Zinad; ʿAbd Allah ibn Yazid ibn Hurmuz; ʿUmar ibn Husayn; Saʿd ibn Ibrahim ibn ʿAbd al-Rahman ibn ʿAwf; Rabiʿah ibn Abi ʿAbd al-Rahman, a client of the sons of Tamim of Quraysh, namely Rabiʿah of Independent Legal Opinion; al-ʿAbbas ibn ʿAbd Allah ibn Maʿbad ibn al-ʿAbbas ibn ʿAbd al-Muttalib; ʿAbd al-Rahman ibn Harmalah al-Aslami; Zayd ibn Aslam; ʿUthman ibn ʿUrwah ibn al-Zubayr; Safwan ibn Sulaym; Ismaʿil ibn Umayyah ibn ʿAmr ibn Saʿid ibn al-ʿAs al-Umawi. Then, after these, came ʿUbayd Allah ibn ʿUmar ibn Hafs ibn ʿAsim ibn ʿUmar ibn al-Khattab; Muhammed ibn ʿAbd al-Rahman ibn Abi Dhi'b al-Qurashi al-ʿAmiri; Muhammed ibn Ishaq;

وهؤلاء هم الفقهاء السبعة المشهورون في المدينة. وكان من أهل الفتيا أيضا فيها أبان بن عثمان بن عفان، وأخذ عن أبيه، عبد الله، وسالم ابنا عبد الله بن عمر، أبو سلمة بن عبد الرحمن بن عوف، علي بن الحسين بن علي بن أبي طالب، ابنه محمد وأخذ عن جابر أبو بكر بن سليمان أبي خيثمة العدوي عدي قريش، نافع مولى ابن عمر، روينا عنه نحو عشر مسائل من فتياه، عمرة بنت عبد الرحمن بن سعد بن زرارة أخي أبي أمامة، أسعد بن زرارة رضي الله عنه، وذكر سفيان أنها كانت تستفتى في البيوع وأخذت عن عائشة وعن الصواحب الأنصاريات، ومروان بن الحكم قبل أن يقوم بالشام، وكان دون هؤلاء، وبعدهم أبو بكر بن محمد بن عمرو بن حزم وابناه محمد وعبد الله، عبد الله بن عمرو بن عثمان بن عفان، وابنه محمد، عبد الله والحسن ابنا محمد بن الحنفية وهو محمد بن علي بن أبي طالب، جعفر بن محمد بن علي بن الحسين بن علي بن أبي طالب، عبد الرحمن بن القاسم، بن محمد بن أبي بكر الصديق، مصعب بن محمد بن شرحبيل العبدري، محمد بن المنكدر التيمي، محمد بن مسلم بن شهاب الزهري. وقد جمع محمد بن أحمد بن مفرج فتاويه في ثلاثة أسفار ضخمة على أبواب الفقه عبد الله بن الحسن بن الحسين بن علي بن أبي طالب، يحيى بن سعيد بن قيس الأنصاري، أبو الزناد عبد الله بن يزيد بن هرمز، عمر بن حسين، سعد بن إبراهيم بن عبد الرحمن بن عوف ربيعة بن أبي عبد الرحمن مولى بن تميم من قريش وهو ربيعة الرأي العباس بن عبد الله بن معبد بن العباس بن عبد المطلب، عبد الرحمن بن حرملة الأسلمي، زيد بن أسلم، عثمان بن عروة بن الزبير، صفوان بن سليم، إسماعيل بن أمية بن عمرو بن سعيد بن العاص الأموي. ثم كان بعد هؤلاء عبيد الله بن عمر بن حفص بن عاصم بن عمر بن الخطاب، محمد بن عبد الرحمن بن أبي ذئب القرشي العامري، محمد بن إسحاق، مالك بن أنس، عبد العزيز بن أبي سلمة الماجشون، محمد بن عبد العزيز بن

[10]**Qur'an references (L2074):** Qur'an 48:29 (Al-Fath); Qur'an 57:10 (Al-Hadid); Qur'an 21:102 (Al-Anbya).

Malik ibn Anas; ʿAbd al-ʿAziz ibn Abi Salamah al-Majishun; Muhammed ibn ʿAbd al-ʿAziz ibn ʿUmar ibn ʿAbd al-Rahman ibn ʿAwf, who held the judgeship of Medina, and on whose legal opinion Jaʿfar ibn Sulayman ibn ʿAli ibn ʿAbd Allah ibn al-ʿAbbas had Malik ibn Anas beaten. After them came Malik's associates, such as ʿAbd al-ʿAziz ibn Abi Hazim; al-Mughirah ibn ʿAbd al-Rahman ibn al-Harith ibn ʿAbd Allah ibn ʿAyyash ibn Abi Rabiʿah ibn al-Mughirah al-Makhzumi; Muhammed ibn Maslamah ibn Muhammed ibn Hisham ibn Ismaʿil ibn al-Walid ibn al-Mughirah, who had a very large compilation of material he had heard from Malik; ʿAbd Allah ibn Nafiʿ, the one-eyed goldsmith; ʿAbd al-Malik ibn ʿAbd al-ʿAziz ibn Abi Salamah al-Majishun; Mutarrif ibn ʿAbd Allah ibn Mutarrif ibn Sulayman ibn Yasar; and Abu Musʿab Ahmad ibn Bakr al-Harith ibn Abi Zurarah ibn al-Musʿab ibn ʿAbd al-Rahman ibn ʿAwf al-Zuhri. He was the last surviving celebrated jurist in Medina. He died in the year two hundred and forty-two, in the days of al-Mutawakkil, and held the judgeship of Medina. Learning there diminished thereafter. Truly, we belong to Allah, and truly, to Him we return. Allah is the bestower of success; He is sufficient for us, and what an excellent Trustee He is.[11][12][13]

عمر بن عبد الرحمن بن عوف ولي قضاء المدينة، وبفتياه ضرب جعفر بن سليمان بن علي بن عبد الله بن العباس مالك بن أنس، وبعدهم أصحاب مالك: كعبد العزيز بن أبي حازم والمغيرة بن عبد الرحمن بن الحارث بن عبد الله بن عياش بن أبي ربيعة بن المغيرة، المخزومي، ومحمد بن مسلمة بن محمد بن هشام بن إسماعيل بن الوليد بن المغيرة وله ديوان كبير جدا سماعه من مالك، وعبد الله بن نافع الأعور الصائغ، وعبد الملك بن عبد العزيز بن أبي سلمة الماجشون، ومطرف بن عبد الله بن مطرف بن سليمان بن يسار، وأبو مصعب أحمد بن بكر الحارث بن أبي زرارة بن المصعب بن عبد الرحمن بن عوف الزهري، وهو آخر من بقي من الفقهاء المشاهير بالمدينة، ومات سنة اثنتين وأربعين ومائتين أيام المتوكل، وولي قضاء المدينة، وقل العلم بها بعد ذلك، فإنا لله وإنا إليه راجعون، والله ولي التوفيق وهو حسبنا ونعم الوكيل.

L2095–2104 The jurists of Basra after the Companions, may Allah be pleased with them ʿAmr ibn Salamah al-Jarmi, who lived in the time of the Prophet, may Allah bless him and grant him peace ﷺ, and whose father was a Companion; Abu Maryam al-Hanafi; Kaʿb ibn Sur; ʿAmr ibn Yathribi; al-Hasan ibn Abi al-Hasan, who encountered five hundred Companions, and whose legal opin-

فقهاء البصرة بعد الصحابة رضي الله عنهم عمرو بن سلمة الجرمي وأدرك النبي صلى الله عليه وسلم ولأبيه صحبة أبو مريم الحنفي كعب بن سور عمرو بن يثربي، والحسن بن أبي الحسن وأدرك خمسمائة من الصحابة. وقد جمع بعض الفقهاء فتياه في سبعة أسفار ضخمة، جابر بن زيد أبو الشعثاء، أخذ عن ابن عباس، محمد بن سيرين، يحيى بن يعمر أبو قلابة عبد الله بن زيد الجرمي، مسلم بن يسار، أبو العالية الرياحي مولى بكر بن عبد الله المزني، حميد بن عبد الرحمن، مطرف بن عبد الله بن الشخير الحرشي، زرارة بن أوفى، أبو بردة بن أبي موسى الأشعري، معبد بن عبد الله، عكيم الجهني، عبد الملك بن يعلى الليثي القاضي، بلال بن أبي بردة بن أبي موسى الأشعري، وهؤلاء لقوا أكابر الصحابة رضي الله عنهم. ثم كان بعدهم: أيوب بن كيسان السختياني، سليمان

[11] **Translator's note (L2090):** The wording "ibn Sulayman Abi Khaythamah" is genealogically awkward: it does not explicitly supply "ibn" before "Abi Khaythamah." The translation preserves the sequence without inserting another generation.

[12] **Translator's note (L2092):** The unpunctuated sequence "Abu al-Zinad ʿAbd Allah ibn Yazid ibn Hurmuz" has been divided into two entries; the supplied text does not explicitly mark that division. The phrase rendered "a client of the sons of Tamim" reads "mawla ibn Tamim," an irregular construction that may reflect a defective transcription of a clan name. "Tamim" has been retained. "Rabiʿah of Independent Legal Opinion" renders the sobriquet Rabiʿat al-Raʾy, preserving its reference to legal reasoning.

[13] **Translator's note (L2094):** The name continues directly from the preceding segment as "Ahmad ibn Bakr al-Harith ibn Abi Zurarah." Its genealogy is awkward as supplied; no missing "ibn" or alternative name has been inserted.

ions one of the jurists collected in seven substantial volumes; Jabir ibn Zayd Abu al-Shaʿtha', who learned from Ibn ʿAbbas; Muhammed ibn Sirin; Yahya ibn Yaʿmar; Abu Qilabah ʿAbd Allah ibn Zayd al-Jarmi; Muslim ibn Yasar; Abu al-ʿAliyah al-Riyahi, the client of Bakr son of Abd Allah al-Muzani; Humayd ibn Abd al-Rahman; Mutarrif ibn Abd Allah ibn al-Shikhkhir al-Harashi; Zurarah ibn Awfa; Abu Burdah ibn Abi Musa al-Ashari; Mabad ibn Abd Allah; Ukaym al-Juhani; Abd al-Malik ibn Yala al-Laythi, the judge; Bilal ibn Abi Burdah ibn Abi Musa al-Ashari. These met the foremost Companions, may Allah be pleased with them. Then after them came Ayyub ibn Kaysan al-Sakhtiyani; Sulayman ibn Tarkhan al-Taymi, a client; Yunus ibn Ubayd; Abd Allah ibn Awn; Khalid ibn Abi Imran; al-Qasim ibn Rabiah; Ashath ibn Abd al-Malik al-Humrani; Hafs ibn Sulayman al-Minqari; Qatadah ibn Diamah al-Sadusi; and Iyas ibn Muawiyah, the judge. After them came Sawwar ibn Abd al-Malik, the Anbari judge; Abu Bakr al-Ataki; Uthman ibn Muslim al-Batti; Talhah ibn Iyas, the judge; Ubayd Allah ibn al-Hasan al-Anbari, the judge; Ashath ibn Jabir; and Amr ibn Ubayd. Then after these came Abd al-Wahhab ibn Abd al-Majid al-Thaqafi; Said ibn Abi Arubah; Hammad ibn Salamah; Hammad ibn Zayd; Abd Allah ibn Dawud al-Khuraybi; Ismail ibn Ulayyah; Bishr ibn al-Mufaddal ibn Lahiq; Muadh ibn Muadh al-Anbari; Abu Asim al-Dahhak ibn Makhlad; Mamar ibn Rashid; Quraysh ibn Anas; Ubayd Allah ibn Muadh; Muhammed ibn Abd Allah al-Ansari; and Kulthum ibn Kulthum. Then Abu Hanifah's legal opinion entered among them through Yusuf ibn Khalid and others, and Malik's legal opinion through Ahmad ibn al-Muadhdhal, except for a few whose circumstances have not reached us, and some whose names have reached us, such as Sulayman ibn Harb al-Washiji, who followed the earlier ways in issuing his legal opinions, and Ibrahim ibn Ulayyah; Yahya ibn Aktham, the judge; Abd al-Salam ibn Umar; Yahya ibn Said al-Qattan; Abd al-Rahman ibn Mahdi; Khalid ibn al-Harith al-Hujaymi; Abd al-Warith ibn Said al-Tannuri; Shubah ibn al-Hajjaj; and their peers among the leading scholars of hadith, whose extensive knowledge of the transmitted practices and reports from the Companions is beyond doubt, as is the fact that each followed no one uncritically in his religion. They are therefore counted among those we have mentioned, but their legal opinions are very few indeed. In issuing legal opinions, they relied only on what they

بن طرخان التيمي مولى يونس بن عبيد، عبد الله بن عون، خالد بن أبي عمران، القاسم بن ربيعة، أشعث بن عبد الملك الحمراني، حفص بن سليمان المنقري، قتادة بن دعامة السدوسي، إياس بن معاوية القاضي. وبعدهم: سوار بن عبد الملك القاضي العنبري، أبو بكر العتكي، عثمان بن مسلم البتي، طلحة بن إياس القاضي، عبيد الله بن الحسن العنبري القاضي، أشعث بن جابر، عمرو بن عبيد، ثم كان بعد هؤلاء: عبد الوهاب بن عبد المجيد الثقفي، سعيد بن أبي عروبة، حماد بن سلمة، حماد بن زيد، عبد الله بن داود الخريبي، إسماعيل بن علية، بشر بن المفضل بن لاحق، معاذ بن معاذ العنبري، أبو عاصم الضحاك بن مخلد، معمر بن راشد، قريش بن أنس، عبيد الله بن معاذ، محمد بن عبد الله الأنصاري، كلثوم بن كلثوم. ثم دخل عندهم رأي أبي حنيفة بيوسف بن خالد وغيره، ورأى مالك بأحمد بن المعذل إلا قليلا ممن لم يبلغنا أمره. وممن بلغنا ذكره كسليمان بن حرب الواشجي فإنه كان جاريا على السنن الأولى في فتياه، وإبراهيم بن علية، ويحيى بن أكثم القاضي، وعبد السلام بن عمر، ويحيى بن سعيد القطان، وعبد الرحمن بن مهدي، وخالد بن الحارث الهجيمي، وعبد الوارث بن سعيد التنوري، وشعبة بن الحجاج. ونظرائهم من أئمة المحدثين ممن لا شك في سعة علمه بالسنن والآثار عن الصحابة وفي أنه كان لا يقلد أحدا في دينه. فهم معدودون فيمن ذكرنا ولكن فتاويهم قليلة جدا، وإنما كانوا يعولون في فتياهم على ما رووا من فتاوى الصحابة والتابعين ولا يكادون في كثير ممن ذكرنا لا يحفظ عنه إلا المسألة والمسألتين ونحو ذلك وكثير منهم أكثر من الفتيا جدا. فقهاء الكوفة بعد الصحابة رضي الله عنهم علقمة بن قيس النخعي الأسود بن يزيد النخعي وهو عم علقمة أخو أبيه، أبو ميسرة عمرو بن شرحبيل الهمداني، مسروق بن الأجدع الهمداني، عبيدة السلماني، شريح بن الحارث الكندي القاضي، سلمان بن ربيعة الباهلي، زيد بن صوحان، سويد بن غفلة، الحارث بن قيس الجعفي، عبد الرحمن بن يزيد بن قيس النخعي، أخو الأسود

transmitted of the legal opinions of the Companions and the Successors, and they scarcely did so. From many of those we have mentioned, only an answer to one question or two questions, or something of that order, has been preserved, whereas many of them issued very numerous legal opinions.

The Jurists of Kufa after the Companions, May Allah Be Pleased with Them

Alqamah ibn Qays al-Nakhai; al-Aswad ibn Yazid al-Nakhai, who was Alqamah's paternal uncle, his father's brother; Abu Maysarah Amr ibn Shurahbil al-Hamdani; Masruq ibn al-Ajda al-Hamdani; Abidah al-Salmani; Shurayh ibn al-Harith al-Kindi, the judge; Salman ibn Rabiah al-Bahili; Zayd ibn Suhan; Suwayd ibn Ghafalah; al-Harith ibn Qays al-Jufi; Abd al-Rahman ibn Yazid ibn Qays al-Nakhai, the brother of al-Aswad ibn Yazid ibn Abd Allah ibn Utbah ibn Masud, the judge; Khaythamah ibn Abd al-Rahman; Abu Hudhayfah Salamah ibn Suhayb; Abu Atiyyah Malik ibn Amir; Abu al-Akhwas; Abd Allah ibn Sakhirah; Raz ibn Hubaysh al-Asadi; Khilas ibn Amr, who was one of Ali's companions, may Allah be pleased with him; Amr ibn Maymun al-Awdi, one of Muadh ibn Jabal's companions; Hammam ibn al-Harith; Nabatah al-Jufi; al-Harith ibn Suwayd; Zayd ibn Muawiyah al-Nakhai; Muaddid al-Shaybani; al-Rabi ibn Khuthaym al-Thawri; Utbah ibn Farqad al-Sulami; his son Amr; Silah ibn Zufar al-Absi; Sharik ibn Hanbal; Abu Wail Shaqiq ibn Salamah al-Asadi; and Ubayd ibn Nadlah. These were companions of Ibn Masud and Ali and foremost members of the Successors. They issued legal opinions concerning religion, and their legal opinions were sought by the people, while the foremost Companions were alive and present, permitting them to do so. Most of them had learned from Umar ibn al-Khattab, Aishah the Mother of the Believers, Ali, and others. Umar ibn Maymun met Muadh ibn Jabal, accompanied him, and learned from him, and thus did so. At his death, Muadh charged him to join Ibn Masud, accompany him, and seek knowledge with him. To these should be added Abu Ubaydah and Abd al-Rahman, the two sons of Abd Allah ibn Masud; Abd al-Rahman ibn Abi Layla al-Ansari, who learned from one hundred and twenty Companions; Maysarah; Zadhan; and al-Dahhak al-Masriqi. Then after them came Ibrahim al-Nakhai; Amir al-Shabi; and Said ibn Jubayr, the client of the Banu Asad, the companion of Ibn Abbas; al-Qasim ibn Abd al-Rahman ibn

بن يزيد بن عبد الله بن عتبة بن مسعود القاضي، خيثمة بن عبد الرحمن أبو حذيفة، سلمة بن صهيب، أبو عطية مالك بن عامر أبو الأخوص، عبد الله بن سخيرة، رزبن حبيش الأسدي، خلاس بن عمرو وهو من أصحاب علي رضي الله عنه. عمرو بن ميمون الأودي من أصحاب معاذ بن جبل، همام بن الحارث، نباتة الجعفي، الحارث بن سويد، زيد بن معاوية النخعي، معضد الشيباني، الربيع بن خيثم الثوري، عتبة بن فرقد السلمي ابنه عمرو، صلة بن زفر العبسي، شريك بن حنبل، أبو وائل شقيق بن سلمة الأسدي، عبيد بن نضلة. وهؤلاء أصحاب ابن مسعود وعلي وأكابر التابعين كانوا يفتون في الدين ويستفتيهم الناس وأكابر الصحابة أحياء حاضرون يجوزون لهم ذلك وأكثرهم قد أخذ عن عمر بن الخطاب وعائشة أم المؤمنين وعلي وغيرهم ولقي عمر بن ميمون معاذ بن جبل وصحبه وأخذ عنه ففعل ذلك وأوصاه معاذ عند موته أن يلحق بابن مسعود فيصحبه ويطلب العلم عنده، ويضاف إلى هؤلاء أبو عبيدة وعبد الرحمن ابنا عبد الله بن مسعود وعبد الرحمن بن أبي ليلى الأنصاري. وأخذ عن مائة وعشرين من الصحابة وميسرة وزاذان والضحاك المسرفي. ثم كان بعدهم: إبراهيم النخعي وعامر الشعبي، وسعيد بن جبير مولى بني أسد صاحب ابن عباس، والقاسم بن عبد الرحمن بن عبد الله بن مسعود الهذلي، وأبو بكر بن أبي موسى الأشعري وكان سائر إخوته بالبصرة ومحارب بن دثار سدوسي، والحكم بن عتيبة، وجبلة بن سحيم الشيباني وصحب ابن عمر. ثم كان بعد هؤلاء حماد بن أبي سليمان ومنصور بن المعتمر السلمي والمغيرة بن مقسم الضبي وسليمان الأعمش مولى بني أسد ومصعر بن كدام الهلالي. ثم كان بعد هؤلاء: محمد بن عبد الرحمن بن أبي ليلى القاضي وعبد الله بن شبرمة القاضي الضبي، وسعيد بن أشوع القاضي وشريك القاضي النخعي والقاسم بن معن وسفيان بن سعيد الثوري، وأبو حنيفة النعمان بن ثابت والحسن بن صالح بن حي. ثم كان بعدهم: حفص بن غياث القاضي ووكيع بن الجراح وأصحاب أبي

Abd Allah ibn Masud al-Hudhali; Abu Bakr ibn Abi Musa al-Ashari, whose other brothers were in Basra; Muharib ibn Dithar, a Sadusi; al-Hakam ibn Utaybah; and Jabalah ibn Suhaym al-Shaybani, who accompanied Ibn Umar. Then after these came Hammad ibn Abi Sulayman; Mansur ibn al-Mutamir al-Sulami; al-Mughirah ibn Miqsam al-Dabbi; Sulayman al-Amash, the client of the Banu Asad; and Misar ibn Kidam al-Hilali. Then after these came Muhammed ibn Abd al-Rahman ibn Abi Layla, the judge; Abd Allah ibn Shubrumah, the Dabbi judge; Said ibn Ashwa, the judge; Sharik, the Nakhai judge; al-Qasim ibn Man; Sufyan ibn Said al-Thawri; Abu Hanifah al-Numan ibn Thabit; and al-Hasan ibn Salih ibn Hayy. Then after them came Hafs ibn Ghiyath, the judge; Waki ibn al-Jarrah; and Abu Hanifah's associates, such as Abu Yusuf, the judge; Zufar ibn al-Hudhayl, a Basran who settled in Kufa; Hammad ibn Abi Hanifah; al-Hasan ibn Ziyad al-Lului, the judge; Muhammed ibn al-Hasan, the judge of Raqqah; Afiyah, the judge; Asad ibn Amr; and Nuh ibn Darraj, the judge; and Sufyan al-Thawri's associates, such as al-Ashjai and al-Muafa ibn Imran; and the two associates of al-Hasan ibn Hayy, Humayd al-Ruasi and Yahya ibn Adam; and a group of scholars of hadith who were not renowned for issuing legal opinions. Then they came to be dominated by uncritical adherence to Abu Hanifah. We have mentioned those associates of Abu Hanifah whom we have mentioned, to the exclusion of the rest, only because they were not wholly absorbed in uncritical adherence. Rather, by their own choice they disagreed with him on many matters of jurisprudence, and for that reason they were included among the jurists. The same applies to those associates of Malik whom we have mentioned among the jurists of Medina and those whom we shall mention among the jurists of Egypt. As for someone wholly absorbed in uncritical adherence, who disagrees with his master on nothing, he is unworthy of being mentioned among the jurists, nor does he deserve to have his name included among the people of knowledge, because he is not one of them. Rather, he is 'like the donkey carrying books.' Success comes through Allah Most High; He is sufficient for us, and an excellent Trustee is He.

The Jurists of the People of Syria after the Companions, May Allah Be Pleased with Them

حنيفة، كأبي يوسف القاضي وزفر بن الهزيل بصري سكن الكوفة وحماد بن أبي حنيفة والحسن بن زياد اللؤلؤي القاضي، ومحمد بن الحسن قاضي الرقة وعافية القاضي وأسد بن عمرو ونوح بن دراج القاضي وأصحاب سفيان الثوري كالأشجعي والمعافى بن عمران وصاحبي الحسن بن حي حميد الرؤاسي ويحيى بن آدم وقوم من أصحاب الحديث لم يشتهروا بالفتيا. ثم غلب عليهم تقليد أبي حنيفة وإنما ذكرنا من ذكرنا من أصحاب أبي حنيفة دون سائرهم، لأنهم لم يستهلكوا في التقليد، بل خالفوه باختيارهم في كثير من الفقه، فدخلوا من أجل ذلك في جملة الفقهاء. وكذلك من ذكرنا في فقهاء المدينة من أصحاب مالك ومن نذكره منهم في فقهاء أهل مصر. وأما من استهلك في التقليد فلم يخالف صاحبه في شيء فليس أهلا أن يذكر في أهل الفقه ولا يستحق أن يلحق اسمه في أهل العلم لأنه ليس منهم، ولكنه كمثل الحمار يحمل أسفارا. وبالله تعالى التوفيق، وهو حسبنا ونعم الوكيل. فقهاء أهل الشام بعد الصحابة رضي الله عنهم أبو إدريس الخولاني ولقي معاذا وأخذ عنه شرحبيل بن الصمت عبد الله بن أبي زكريا الخزاعي، قبيصة بن ذؤيب الخزاعي وطلب بالمدينة. وجنادة بن أبي أمية، وسليمان بن حبيب المحاربي والحارث بن عميرة الزبيدي وخالد بن معدان وعبد الرحمن بن غنم الأشعري وجبير بن نفير، ثم كان بعدهم عبد الرحمن بن جبير بن نفير ومكحول وعمر بن عبد العزيز ورجاء بن حيوة، وكان عبد الملك بن مروان يعد في الفقهاء قبل أن يلي ما ولي، وحدير بن كريب. ثم كان بعد هؤلاء: يحيى بن حمزة القاضي وأبو عمرو عبد الرحمن بن عمرو الأوزاعي وإسماعيل بن أبي المهاجر وسليمان هو مولى ابن موسى الأموي وسعيد بن عبد العزيز ثم مخلد بن الحسين والوليد بن مسلم والعباس بن يزيد صاحب الأوزاعي، وشعيب بن إسحاق صاحب أبي حنيفة وأبو إسحاق الفزاري صاحب ابن المبارك. ثم لم يكن بعد هؤلاء في الشام فقيه مشهور.

Abu Idris al-Khawlani, who met Muadh and learned from him; Shurahbil ibn al-Samt; Abd Allah ibn Abi Zakariyya al-Khuzai; Qabisah ibn Dhuayb al-Khuzai, who sought knowledge in Medina; Junadah ibn Abi Umayyah; Sulayman ibn Habib al-Muharibi; and al-Harith ibn Umayrah al-Zubaydi, and Khalid ibn Madan; Abd al-Rahman ibn Ghanm al-Ashari; and Jubayr ibn Nufayr. Then after them came Abd al-Rahman ibn Jubayr ibn Nufayr; Makhul; and Umar ibn Abd al-Aziz; and Raja ibn Haywah. Abd al-Malik ibn Marwan was counted among the jurists before he assumed the authority that he assumed; and Hudayr ibn Kurayb. Then after these came Yahya ibn Hamzah, the judge; Abu Amr Abd al-Rahman ibn Amr al-Awzai; Ismail ibn Abi al-Muhajir; Sulayman—he is the client of Ibn Musa al-Umawi; and Said ibn Abd al-Aziz. Then came Makhlad ibn al-Husayn; al-Walid ibn Muslim; al-Abbas ibn Yazid, the associate of al-Awzai; Shuayb ibn Ishaq, the associate

of Abu Hanifah; and Abu Ishaq al-Fazari, the associate of Ibn al-Mubarak. Then after these there was no renowned jurist in Syria.[14][15][16][17][18][19]

L2105 The jurists of Egypt after the Companions, may Allah be pleased with them, were Yazid ibn Abi Habib and Bukayr ibn ʻAbd Allah ibn al-Ashajj, and after them ʻAmr ibn al-Harith. It has been transmitted from Ibn Wahb that he said: "Had ʻAmr ibn al-Harith lived on among us, we would have had no need, with him present, for Malik or anyone else." He was an Ansari. There were also al-Layth ibn Saʻd and ʻUbayd Allah ibn Abi Jaʻfar, and af-

فقهاء مصر بعد الصحابة رضي الله عنهم يزيد بن أبي حبيب وبكير بن عبد الله بن الأشج وبعدهما عمرو بن الحارث، وقد روي عن ابن وهب أنه قال: لو عاش لنا عمرو بن الحارث ما احتجنا معه إلى مالك ولا إلى غيره، وهو أنصاري، والليث بن سعد، وعبيد الله بن أبي جعفر، وبعدهم أصحاب مالك كعبد الله بن وهب وعثمان بن كنانة وأشهب وابن القاسم على غلبة تقليد مالك عليه إلا في الأقل. ثم أصحاب الشافعي كأبي إبراهيم إسماعيل بن يحيى المزني وأبي يعقوب يوسف بن يحيى البويطي ومحمد بن عبد الله بن عبد الحكم. ثم غاب عليهم تقليد مالك وتقليد الشافعي إلا قوما قليلا لهم اختيارات كمحمد بن يوسف وأبي جعفر أحمد بن محمد الصحاوي وغيرهما. وكان بالقيروان سحنون بن سعيد، وله كثير من الاختيار، وسعيد بن محمد بن الحداد. وكان بالأندلس ممن له أيضا شيء من الاختيار يحيى بن يحيى وعبد الملك بن حبيب وبقي بن مخلد وقاسم بن محمد صاحب الوثائق، يحفظ لهم فتاوى يسيرة. وكذلك أسلم بن عبد العزيز القاضي ومنذر بن سعيد. وممن أدركنا من أهل العلم على الصفة التي من بلغها استحق الاعتداد به في الاختلاف: مسعود بن سليمان بن مفلت، ويوسف بن عبد الله بن محمد بن عبد البر النمري.

[14] **Translator's note (L2095):** The final client relationship is translated as supplied and continues into the next segment. Its wording may reflect a transcription problem; no different affiliation has been substituted.

[15] **Translator's note (L2096):** The opening continues the name Bakr ibn Abd Allah al-Muzani from the preceding segment; only the portion present here is translated. The unpunctuated sequence 'Mabad ibn Abd Allah Ukaym al-Juhani' leaves the boundary between names uncertain. It is rendered as two entries without supplying a missing patronymic. The word meaning 'client' follows Sulayman al-Taymi without naming the person or group to whom he was affiliated. Yunus ibn Ubayd is treated as the next entry, though the unpunctuated wording could grammatically attach his name to 'client'.

[16] **Translator's note (L2099):** The phrase translated 'and they scarcely did so' lacks an explicit complement and is followed by an abrupt syntactic restart. The translation preserves the interruption without supplying a specific missing action. The source calls al-Aswad Alqamah's paternal uncle. This appears to reverse the commonly given relationship, but the claim is retained as written. The sequence after 'the brother of al-Aswad ibn Yazid' appears to conflate a kinship description with another list entry. The supplied wording continues directly with 'ibn Abd Allah ibn Utbah ibn Masud, the judge'; it is retained without inserting a conjectural personal name or silently separating the genealogy. The supplied forms Abu al-Akhwas, Abd Allah ibn Sakhirah, and 'Raz ibn Hubaysh' appear corrupt; the last is written as the fused sequence 'رزبن حبيش'. These readings are represented rather than silently replaced with conjectural corrections.

[17] **Translator's note (L2100):** The source here names Umar ibn Maymun, whereas the preceding unit names Amr ibn Maymun. The discrepancy is retained. The phrase 'and thus did so' translates the source's repetitive 'fa-faala dhalika'; its precise reference is unclear.

[18] **Translator's note (L2101):** The source writes the name rendered Misar as 'مصعر', an apparent spelling corruption; the supplied consonant corresponding to s is retained rather than silently changing the name to the familiar Musir/Misar form written with س.

[19] **Translator's note (L2104):** The source's sequence 'Sulayman—he is the client of Ibn Musa al-Umawi' appears disordered or corrupt. It is translated as supplied rather than rearranged into a conjectural personal name and affiliation.

ter them the associates of Malik, such as ʻAbd Allah ibn Wahb, ʻUthman ibn Kinanah, Ashhab, and Ibn al-Qasim, although uncritical adherence to Malik predominated in the latter, except in very few matters. Then came the associates of al-Shafiʻi, such as Abu Ibrahim Ismaʻil ibn Yahya al-Muzani, Abu Yaʻqub Yusuf ibn Yahya al-Buwayti, and Muhammed ibn ʻAbd Allah ibn ʻAbd al-Hakam. Then uncritical adherence to Malik and uncritical adherence to al-Shafiʻi predominated among them, except for a few people who had independently chosen positions, such as Muhammed ibn Yusuf, Abu Jaʻfar Ahmad ibn Muhammed al-Sahawi, and others. In Qayrawan there were Sahnun ibn Saʻid, who had many independently chosen positions, and Saʻid ibn Muhammed ibn al-Haddad. In al-Andalus, those who likewise had some independently chosen positions included Yahya ibn Yahya, ʻAbd al-Malik ibn Habib, Baqi ibn Makhlad, and Qasim ibn Muhammed, the specialist in legal instruments; a few legal opinions of theirs are preserved. Likewise, there were Aslam ibn ʻAbd al-ʻAziz the judge and Mundhir ibn Saʻid. Among the people of learning whom we met who possessed the qualification that entitles its possessor to be counted in scholarly disagreement were Masʻud ibn Sulayman ibn Muflit and Yusuf ibn ʻAbd Allah ibn Muhammed ibn ʻAbd al-Barr al-Namari.[20]

وكان باليمن مطرف بن مازن قاضي صنعاء وعبد الرزاق بن همام، وهشام بن يوسف، ومحمد بن ثور، وسماك بن الفضل. والأئمة المتقدمين من أهل الثبات على السنن الأول، ولكنهم ليسوا في أعداد أهل الأمصار، منهم خراسانيون، ومنهم من سكن بغداد. قال أبو محمد: عبد الله بن المبارك الخراساني، ونعيم بن حماد، وأبو ثور إبراهيم بن خالد الكلبي صاحب الشافعي بغدادي وأحمد بن محمد بن حنبل مروزي سكن بغداد، وإسحاق بن راهويه نيسابوري سكن بغداد، وأبو عبيد القاسم بن سلام اللغوي كوفي سكن بغداد، وسليمان بن داود بن علي بن عبد الله بن العباس بن عبد المطلب بن هاشم بن عبد مناف، وحسين بن علي الكرابيسي بغدادي، وكان أبو خيثمة زهير بن حرب يجري مجراهم، ولم يكن له اتساعهم، وأبو حاتم محمد بن إدريس الحنظلي صليبة،

L2106–2109 In Yemen there were Mutarrif ibn Mazin, the judge of Sanaʻa, ʻAbd al-Razzaq ibn Hammam, Hisham ibn Yusuf, Muhammed ibn Thawr, and Simak ibn al-Fadl. There were also the earlier leading scholars who remained steadfast in following the earliest established practices, but they are not counted among the scholars of the regional centers; some were Khurasanis, and some settled in Baghdad. Abu Muhammed said: ʻAbd Allah ibn al-Mubarak al-Khurasani; Nuʻaym ibn Hammad; Abu Thawr Ibrahim ibn Khalid al-Kalbi, an associate of al-Shafiʻi, who was a Baghdadi; Ahmad ibn Muhammed ibn Hanbal, a native of Marw who settled in Baghdad; Ishaq ibn Rahawayh, a native of Nishapur

[20] **Translator's note (L2105):** The source reads غاب عليهم, literally suggesting disappearance or absence, where the context appears to require غلب عليهم, "predominated among them." The translation follows this apparent intended reading explicitly rather than treating the supplied wording as unproblematic. The supplied name الصحاوي is rendered al-Sahawi; it appears to be an error for الطحاوي, al-Tahawi, but has not been silently corrected.

who settled in Baghdad; Abu ʻUbayd al-Qasim ibn Sallam the linguist, a Kufan who settled in Baghdad; Sulayman ibn Dawud ibn ʻAli ibn ʻAbd Allah ibn al-ʻAbbas ibn ʻAbd al-Muttalib ibn Hashim ibn ʻAbd Manaf; and Husayn ibn ʻAli al-Karabisi, a Baghdadi. Abu Khaythamah Zuhayr ibn Harb followed their course, although he did not possess their breadth of learning. There were also Abu Hatim Muhammed ibn Idris, a Hanẓali by direct descent, and Abu Zurʻah ʻUbayd Allah ibn ʻAbd al-Karim, both of Rayy. Hushaym ibn Bashir also had independently chosen positions. After these came Dawud ibn ʻAli, Muhammed ibn Nasr al-Marwazi, and Muhammed ibn Ismaʻil al-Bukhari; then Muhammed ibn Jarir al-Tabari, Muhammed ibn Ibrahim ibn al-Mundhir al-Naysaburi, and the associates of Dawud, such as his son Muhammed, ʻAbd Allah ibn Ahmad ibn al-Mughallis, ʻAbd Allah ibn Muhammed Ruwaym, ʻAbd Allah ibn Muhammed al-Radiʻ, Abu Bakr ibn al-Najjar, Abu Bakr Ahmad ibn Muhammed al-Awani, al-Khallal, and Abu al-Tayyib Muhammed ibn Ahmad al-Diyaji, all of them Baghdadis. Among their peers, although they were proponents of analogy, were Abu ʻUbayd ʻAli ibn Harb, the judge of Egypt, and Abu Ishaq Ibrahim ibn Jaʻfar ibn Jabir, the judge of Aleppo; both inclined toward al-Shafiʻi. Also among these were Muhammed ibn Shujaʻ al-Balkhi, Ahmad ibn Abi ʻImran, and Bakkar ibn Qutaybah, a Basran who assumed the judgeship of Egypt and died there. These, too, had independently chosen positions, even though for the most part they did not depart from Abu Hanifah and his associates Zufar, Abu Yusuf, and Muhammed ibn al-Hasan. Abu Muhammed said: This chapter is of immense benefit in exposing the falsity of claims of consensus concerning questions of jurisprudence on which people's positions cannot be comprehensively known except through transmission. Those whom we have mentioned are the ones whose positions our opponents count when considering disagreement, and whose agreement they count when considering consensus, after the consensus of the Companions.

وأبو زرعة عبيد الله بن عبد الكريم الرازيان، وكان هشيم بن بشير له اختيارات. وكان بعد هؤلاء: داود بن علي، ومحمد بن نصر المروزي، ومحمد بن إسماعيل البخاري، ثم محمد بن جرير الطبري، ومحمد بن إبراهيم بن المنذر النيسابوري، وأصحاب داود كمحمد ابنه، وعبد الله بن أحمد بن المغلس، وعبد الله بن محمد رويم وعبد الله بن محمد الرضيع، وأبي بكر بن النجار، وأبي بكر أحمد بن محمد الأواني، والخلال، وأبي الطيب محمد بن أحمد الدياجي؛ بغداديون كلهم. ومن نظرائهم ولكنهم من أصحاب القياس: أبو عبيد علي بن حرب قاضي مصر وأبو إسحاق إبراهيم بن جعفر بن جابر قاضي حلب، وكانا مائلين إلى الشافعي، ومن هؤلاء أيضا: محمد بن شجاع البلخي، وأحمد بن أبي عمران، وبكار بن قتيبة بصري ولي قضاء مصر وبها مات. فهؤلاء أيضا لهم اختيارات وإن كانوا في الأغلب لا يفارقون أبا حنيفة وأصحابه زفر وأبا يوسف ومحمد بن الحسن. قال أبو محمد: وهذا الباب له منفعة عظيمة في تكذيب دعوى الإجماع في مسائل الفقه التي لا تعم أقوال الناس فيها إلا بالرواية فهؤلاء الذين ذكرناهم الذين يعتد خصومنا بأقوالهم في الخلاف وبإجماعهم في الإجماع بعد إجماع الصحابة وهؤلاء الذين رويت عنهم الأقوال في مسائل الفقه.

These are the people from whom positions on questions of jurisprudence have been transmitted.[21][22][23]

L2110 From many of these, only positions on two or three questions are preserved. We may have overlooked some whom we have not mentioned, but they are undoubtedly few, and belong to those from whom very little indeed is preserved. We are human, and perfection among human beings belongs to the prophets, peace be upon them, and to those whom the Prophet, may Allah bless him and grant him peace ﷺ, described as possessing perfection. Success comes through Allah Most High. Now, if the only Successors whose identities have been recorded are those we have named, while everyone who knows anything of the historical reports knows with absolute certainty that they filled the land—from the furthest reaches of Sind and the furthest reaches of Khurasan to Armenia and Azerbaijan, to Mosul and the territories of Rabi'ah and Mudar, to Syria, to Egypt, to Ifriqiyah, to the furthest reaches of al-Andalus, to the remotest Berber lands, to the Hijaz, Yemen, and the whole Arabian Peninsula, to Iraq, to al-Ahwaz, to Fars, to Kirman, to Sijistan, to Kabul, to Sind, Isfahan, Tabaristan, Jurjan, and al-Jibal—and that Islam spread throughout all these lands and prevailed over them, praise be to Allah Most High, and that throughout all the lands we have mentioned the Muslims had no large village without a legal adviser and a teacher of Quranic recitation, sometimes more than one: how could anyone possessed of reason and some measure of religion, who fears Allah Most High concerning lying

وكثير من هؤلاء لا يحفظ عنهم إلا المسألتان والثلاث وربما فاتنا من لم نذكر إلا أنهم بلا شك يسير، وممن لا يحفظ عنه إلا اليسير جدا، ونحن بشر والكمال من الناس للنبيين عليهم السلام ولمن وصفه النبي عليه الصلاة والسلام بالكمال، وبالله تعالى التوفيق. فإذا لم يضبط من التابعين إلا من سمينا، وكل من يدري شيئا من الأخبار يوقن قطعا بأنهم ملؤوا الأرض من أقصى السند وأقصى خراسان إلى أرمينية وأذربيجان إلى الموصل وديار ربيعة وديار مضر إلى الشام إلى مصر إلى أفريقيا إلى أقصى الأندلس إلى أقاصي بلاد البربر إلى الحجاز واليمن وجميع جزيرة العرب إلى العراق إلى الأهواز إلى فارس إلى كرمان إلى سجستان إلى كابل إلى السند وأصبهان وطبرستان وجرجان والجبال، وأن جميع هذه البلاد فشا فيها الإسلام وغلب عليها، ولله تعالى الحمد. وإنه لم يكن للمسلمين في جميع ما ذكرنا من البلاد ولا قرية ضخمة إلا كان فيها المفتي والمقرىء وربما أكثر من واحد، فكيف يسوغ لدى عقل له حظ من دين يخاف الله تعالى في الكذب، ويتقي العار والشهرة والافتضاح بالإفك على كل مفت كان في البلاد المذكورة في دعواه الإجماع على ما لا يتيقن أن كل واحد من مفتي جميع تلك البلاد قال به

[21] **Translator's note (L2106):** The accusative form الأئمة المتقدمين is syntactically irregular here. It is understood as introducing a further group, whose description continues in the next unit.

[22] **Translator's note (L2107):** Several personal names in this list may contain transcription errors. The supplied forms حرب, رويم, الرضيع, الأواني, and الدياجي have been retained as Harb, Ruwaym, al-Radi', al-Awani, and al-Diyaji. The unpunctuated sequence الأواني والخلال is translated as listing al-Awani and al-Khallal separately, although the intended division of names is uncertain.

[23] **Translator's note (L2108):** The source reads لا تعم أقوال الناس فيها, an awkward expression literally concerning the comprehensiveness of people's positions. The translation understands it as referring to comprehensive knowledge of those positions through transmission.

and guards against disgrace, notoriety, and exposure for falsely attributing statements to every legal adviser in the lands mentioned, consider it permissible to claim consensus on something that he does not know with certainty every one of the legal advisers in all those lands affirmed?

L2111–2112 And if those we have named are but a small fraction compared with those whose names have not reached us, and for most of them only positions on very few questions can be found, although they themselves are few in number, where are their legal opinions on all the other matters concerning which nothing has been transmitted from them? What, then, of those among them who have not been named? It is thus established with certainty that none can enumerate all the positions of the Successors, and then the positions of the people of each subsequent age, on every case that arises, except Allah Most High, their Creator, from whom nothing in His creation is hidden. By Allah, the angels have not enumerated that, for each angel enumerates only the statements of those over whom he has been appointed a guardian and an ever-ready watcher, not the statements of anyone else. How, then, could someone who has been given only a little knowledge undertake to enumerate all of it? It has therefore become as clear as the sun on a cloudless day that anyone who claims consensus concerning anything other than that of which it is known with certainty that whoever did not affirm it was not a Muslim is a liar, a purveyor of falsehood, and a fabricator. We seek refuge in Allah from falsely attributing something to even a single unbeliever—how much more, then, to many people; how much more to a believer; how much more to all the scholars of the people of Islam, every last one of them, ancient and recent! This is something that makes the skin shudder. We seek refuge in Allah the Magnificent from abandonment. Furthermore, there is no way to find, on any question, a recorded position from every one of those we have named, few as they are compared with those we have not named. All that can be found on a question is a transmission from somewhere between eleven and nineteen men, or fewer, and they disagree as well. Whoever devotes attention to the transmissions in compiled works and to scattered hadith reports will ascertain with certainty what we have said. All of this makes plain the falsehood of anyone who claims consensus concerning anything

وإذا كان ممن سميناهم جزءا يسيرا ممن لم يبلغنا اسمه لا يوجد لأكثرهم إلا مسائل يسيرة جدا وهم عدد يسير فأين فتاويهم في سائر ما لم يرد عنهم فكيف بمن لم يسم منهم؟. فصح يقينا أنه لا يحصي جميع أقوال التابعين. ثم أقوال أهل عصر بعدهم في كل نازلة إلا الله تعالى خالقهم الذي لا يخفى عليه شيء من خلقه. ووالله ما أحصت الملائكة ذلك، لأن كل ملك إنما يحصي أقوال من جعل عليه حفيظا ورقيبا عتيدا لا قول من سواه، فكيف أن يتعاطى الاحصاء لذلك كله من لم يؤت العلم إلا قليلا؟. فوضح وضوحا كالشمس في يوم صحو أن كل من ادعى الإجماع على ما عدا ما قد جاء اليقين بأن من لم يقله لم يكن مسلما فهو كاذب آفك مفتر ونعوذ بالله من الكذب على كافر واحد فكيف على ناس كثير، فكيف على مؤمن فكيف على جميع علماء أهل الإسلام، أولهم عن آخرهم. قديما وحديثا هذا أمر تقشعر منه الجلود ونعوذ بالله العظيم من الخذلان، ثم إنه لا سبيل أن يوجد في مسألة ذكر قول لكل من سمينا على قلتهم فيمن لم نسم وإنما يوجد في المسألة رواية عن بضع عشر رجلا فأقل مختلفين أيضا. ومن عنى بروايات المصنفات والأحاديث المنثورة وقف على ما قلنا يقينا. وكل هذا مبين كذب من ادعى الإجماع على غير ما ذكرنا وبالله تعالى التوفيق

other than what we have mentioned. Success comes through Allah Most High.[24]

[24]**Translator's note (L2111):** The opening wording ممن سميناهم جزءا يسيرا ممن لم يبلغنا اسمه is syntactically disturbed. The translation follows the contextual sense that those named constitute a small fraction compared with those whose names have not reached the author; the supplied wording does not express this cleanly.



PRECISION IN THE FOUNDATIONS OF LEGAL RULINGS

الباب 29: الدليل

Chapter 29: Inferential Proof

Ibn Ḥazm · Arabic–English parallel edition

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[الباب التاسع والعشرون في الدليل]

قال أبو محمد ظن قوم بجهلهم أن قولنا بالدليل خروج منا عن النص والإجماع وظن آخرون أن القياس والدليل واحد، فأخطؤوا في ظنهم أفحش خطأ. ونحن إن شاء الله عز وجل نبين الدليل الذي نقول به بيانا يرفع الإشكال جملة فنقول وبالله تعالى التوفيق: الدليل مأخوذ من النص ومن الإجماع. فأما الدليل المأخوذ من الإجماع فهو ينقسم أربعة أقسام كلها أنواع من أنواع الإجماع وداخلة تحت الإجماع وغير خارجة عنه، وهي استصحاب الحال، وأقل ما قيل وإجماعهم على ترك قولة ما، وإجماعهم على أن حكم المسلمين سواء وإن اختلفوا في حكم كل واحدة منها وهذه الوجوه قد بيناها كلها في كلامنا في الإجماع فأغنى عن ترددها. وبالله تعالى التوفيق. وأما الدليل المأخوذ من النص، فهو ينقسم أقساما سبعة كلها واقع تحت النص: أحدها: مقدمتان تنتج نتيجة ليست منصوصة في إحداهما كقوله صلى الله عليه وسلم كل مسكر خمر وكل خمر حرام النتيجة كل مسكر حرام، فهاتان المقدمتان دليل برهاني على أن كل مسكر حرام. وثانيها: شرط معلق بصفة فحيث وجد فواجب ما علق بذلك الشرط، مثل قوله تعالى: {ليميز الله الخبيث من الطيب ويجعل الخبيث بعضه على بعض فيركمه جميعا فيجعله في جهنم أولئك هم الخاسرون} فقد صح بهذا أن من انتهى غفر له. وثالثها: لفظ يفهم منه معنى فيؤدى بلفظ آخر وهذا نوع من تسميه أهل الاهتبال بحدود الكلام المتلائمات مثل قوله تعالى: {وما كان استغفار إبراهيم لأبيه إلا عن موعدة وعدها إياه فلما تبين له أنه عدو لله تبرأ منه إن إبراهيم لأواه حليم} فقد فهم من هذا فهما ضروريا أنه ليس بسفيه وهذا هو معنى واحد يعبر عنه بألفاظ شتى كقولك الضيغم والأسد والليث والضرغام وعنبسة، فهذه كلها أسماء معناها واحد وهو الأسد.

[Chapter Twenty-Nine: On Inferential Proof]

L2113

L2114–2115 Abu Muhammed said: Some people, in their ignorance, supposed that our acceptance of inferential proof constitutes a departure on our part from the authoritative text and consensus. Others supposed that analogy and inferential proof are one and the same. They were most grievously mistaken in their supposition. We shall, if Allah, Mighty and Majestic, wills, explain the inferential proof we accept in a manner that removes the difficulty entirely. We therefore say—and success comes through Allah Most High—that proof is derived from the text and from consensus. As for proof derived from consensus, it falls into four divisions, all of which are varieties of consensus, included within consensus and not outside it. These are: the presumption of continuity of an existing state; the least of what has been said; their consensus on abandoning a particular position; and their consensus that the ruling applicable to Muslims is the same, even though they disagree about the ruling in each individual instance. We have already explained all these approaches in our discussion of consensus, making their repetition unnecessary. Success comes through Allah Most High.

As for proof derived from the text, it falls into seven divisions, all included within the text. The first consists of two premises yielding a conclusion that is not explicitly stated in either of them, as in his saying—may Allah bless him and grant him peace ﷺ—"Every intoxicant is wine, and every wine is forbidden." The conclusion is: every intoxicant is forbidden. These two premises thus constitute a demonstrative proof that every intoxicant is forbidden.

The second is a condition attached to a qualifying attribute: wherever it is present, what is attached to that condition necessarily follows. An example is His saying, Most High: "So that Allah may distinguish the impure from the pure, and place the impure one upon another, heap it all together, and put it in Hell. Those are the losers." It is thereby established that whoever desists will be forgiven.

The third is an expression from which a meaning is understood and then conveyed through another expression. This is a variety of what those con-

cerned with the definitions of discourse call mutually equivalent expressions. An example is His saying, Most High: "Abraham's seeking forgiveness for his father was only because of a promise he had made to him. But when it became clear to him that he was an enemy of Allah, he dissociated himself from him. Abraham was indeed much given to sighing, forbearing." From this it is necessarily understood that he was not foolish. This is a single meaning expressed through various words, as when you say 'the fierce lion,' 'the lion,' 'the powerful lion,' 'the mighty lion,' and 'a lion'—ḍaygham, asad, layth, ḍirghām, and ʿanbasah. All these are names whose meaning is one: the lion.[1][2][3]

L2116–2118 The fourth consists of alternatives that are all invalidated except one, so that the remaining alternative is established. For example: this thing is either forbidden, in which case such-and-such a ruling applies to it; obligatory, in which case such-and-such a ruling applies to it; or permissible, in which case such-and-such a ruling applies to it. It is neither obligatory nor forbidden; therefore it is permissible, and such-and-such a ruling applies to it. Or a person's statement entails alternatives that are all invalid, and therefore the statement is invalid.

The fifth consists of propositions presented in an ordered series. This entails that the higher degree is above the next one following it, even though it has not been explicitly stated that it is above the next one. For example, you say: Abu Bakr is superior to Umar, and Umar is superior to Uthman; therefore Abu Bakr is undoubtedly superior to Uthman.

رابعها: أقسام تبطل كلها إلا واحدا فيصح ذلك الواحد مثل أن يكون هذا الشيء إما حرام فله حكم كذا، وإما فرض له حكم كذا وإما مباح فله حكم كذا، فليس فرضا ولا حراما فهو مباح له حكم كذا أو يكون قوله يقتضي أقساما كلها فاسد فهو قول فاسد. وخامسها: قضايا واردة مدرجة فيقتضي ذلك أن الدرجة العليا فوق التالية لها بعدها وإن كان لم ينص على أنها فوق التالية، مثل قولك: أبو بكر أفضل من عمر، وعمر أفضل من عثمان، فأبو بكر بلا شك أفضل من عثمان. وسادسها: أن نقول: كل مسكر حرام، فقد صح بهذا أن بعض المحرمات مسكر وهذا هو الذي تسميه أهل الاهتبال بحدود الكلام، عكس القضايا، وذلك أن الكلية الموجبة تنعكس جزئية أبدا. وسابعها: لفظ ينطوي فيه معان جمة مثل قولك: زيد يكتب، فقد صح من هذا اللفظ أنه حي، وأنه ذو جارحة سليمة يكتب بها وأنه ذو آلات يصرفها، ومثل قوله تعالى: {كل نفس ذائقة الموت وإنما توفون أجوركم يوم القيامة فمن زحزح عن النار وأدخل الجنة فقد فاز وما الحياة الدنيا إلا متاع الغرور} فصح من ذلك أن زيدا يموت وأن هندا تموت وأن عمرا يموت وهكذا كل ذي نفس، وإن لم يذكر نص اسمه. فهذه هي الأدلة التي نستعملها وهي معاني النصوص ومفهومها وهي كلها واقعة تحت النص وغير خارجة عنه أصلا، وقد بيناها وأنعمنا الكلام عليها في كتابنا الموسوم بكتاب

[1] **Translator's note (L2114):** "Inferential proof" renders الدليل, distinguished here from analogy (القياس).

[2] **Translator's note (L2115):** The opening word completes the preceding segment's statement about removing ambiguity entirely. The Qur'anic quotation is 8:37, concerning the separation of the impure from the pure. It does not state the conditional forgiveness invoked in the following argument. That argument appears to refer to 8:38; the supplied quotation has been retained without substitution. The Arabic lion names are synonyms with differing associations; the English modifiers are approximate aids to distinguishing the examples, not separate definitions supplied by the author.

[3] **Qur'an references (L2114):** Qur'an 8:37 (Al-Anfal); Qur'an 9:114 (At-Tawbah).

The sixth is that we say: every intoxicant is forbidden. It is thereby established that some forbidden things are intoxicants. This is what those concerned with the definitions of discourse call the conversion of propositions, for a universal affirmative always converts into a particular proposition.

The seventh is an expression encompassing numerous meanings. For example, you say: Zayd writes. From this expression it is established that he is alive, that he possesses a sound bodily member with which he writes, and that he possesses implements that he manipulates. Another example is His saying, Most High: "Every soul shall taste death, and you will be paid your rewards in full only on the Day of Resurrection. Whoever is removed from the Fire and admitted to the Garden has indeed triumphed. The life of this world is only the enjoyment of delusion." It follows from this that Zayd will die, Hind will die, and Amr will die, and likewise every being possessing a soul, even though its name has not been expressly mentioned.

These, then, are the proofs we employ. They are the meanings of the texts and what is understood from them. They all fall within the text and do not depart from it at all. We have explained them and discussed them thoroughly in our work entitled The Book of Approximation, and here we have confined ourselves to mentioning only this much about them. All these varieties fall into one of two divisions: either the detailed exposition of a comprehensive statement, or the expression of a single meaning through various words, as when one language is expressed in another language.

As for what is apprehended through sense perception alone, the text has come affirming its acceptance—His saying, Mighty and Majestic: "Have they legs with which they walk? Or have they hands with which they strike? Or have they eyes with which they see? Or have they ears with which they hear? Say: 'Call upon your partners, then scheme against me and give me no respite.'" And likewise all the other texts in which the senses and reason are called upon as witnesses. Moreover, the senses and reason are the foundation of everything: through them we have recognized the truth of the Qur'an, divine lordship, and prophethood. Thus we did not invoke the text as proof to establish them on the grounds that, were it not for the text, what is apprehended would not be valid through reason and the senses, but rather

التقريب واقتصرنا ههنا على هذا المقدار من ذكرها فقط، وجميع هذه الأنواع كلها لا تخرج من أحد قسمين، إما تفصيل لجملة، وإما عبارة عن معنى واحد بألفاظ شتى، كلغة يعبر عنها بلغة أخرى. وأما ما أدرك بالحس فقط جاء النص بقبوله عز وجل: {ألهم أرجل يمشون بها أم لهم أيد يبطشون بها أم لهم أعين يبصرون بها أم لهم آذان يسمعون بها قل ادعوا شركاءكم ثم كيدون فلا تنظرون} وسائر النصوص المستشهد فيها بالحواس وبالعقل، مع أن الحواس والعقل أصل لكل شيء وبهما عرفنا صحة القرآن والربوبية والنبوة فلم نحتج في إثباتها بالنص، لأنه لولا النص لم يصح ما يدرك بالعقل والحواس لكن حسما لشغب أهل الضعف العاكسين للاستدلال القائلين لا نأخذ إلا ما في النصوص.

to put an end to the contentious objections of those of weak understanding who reverse the direction of inference and say, "We accept only what is in the texts."[45]

L2119–2120 Discussion of this has already appeared in the chapter establishing the probative authority of reason in this book of ours. Success comes through Allah Most High. Seeking proof is distinct from proof itself, for someone may seek proof without arriving at the proof. Seeking proof—which is the search for proof—may occur on the part of someone who does not find what he seeks. A proof may also come unexpectedly upon someone who is not seeking it, either through his reading it in a book or through an informant telling him of it or through its suddenly coming to his mind. It is therefore established that seeking proof is distinct from proof itself. It is also established that our proof does not depart from the text or consensus at all, and that it is simply what is understood from the expression. A cause is not called a proof, and a proof is not called a cause. A cause is anything that necessarily produces an effect, such that neither has ever been found without the other, as with fire's causing moisture to rise and drawing fiery substances to itself: that belongs to its nature.

Here the proponents of analogy confused matters: they called proof a cause and a cause proof, and their error was egregious. They called their assigning to something about which no explicit text exists a ruling explicitly stated concerning something else a proof. This is an error. Rather, this is precisely the analogy that we reject and invalidate. They thus conflated meanings, applying the name of a sound meaning to something false and the name of a false meaning to something sound. They mingled things and confused whatever they pleased, without distinguishing the meanings from one another. The matter consequently became confused for them, and they wandered astray

وقد مضى الكلام في هذا في باب إثبات حجة العقل من كتابنا هذا وبالله تعالى التوفيق، والاستدلال هو غير الدليل، لأنه قد يستدل من لا يقع على الدليل، وقد يوجد الاستدلال وهو طلب الدليل ممن لا يجد ما يطلب وقد يرد الدليل مهاجمة على من لا يطلبه، إما بأن يطالعه في كتاب، أو يخبره به مخبر أو يثوب إلى ذهنه دفعه، فصح أن الاستدلال غير الدليل، وصح أن دليلنا غير خارج عن النص أو الإجماع أصلا، وأنه إنما هو مفهوم اللفظ فقط، والعلة لا تسمى دليلا، والدليل لا يسمى علة، فالعلة هي كل ما أوجب حكما لم يوجد قط أحدهما خاليا من الآخر كتصعيد النار للرطوبات واستجلابها الناريات فذلك من طبعها. وههنا خلط أصحاب القياس فسموا الدليل علة والعلة دليلا ففحش غلطهم وسموا حكمهم في شيء لم ينص عليه بحكم قد نص عليه شيء آخر دليلا وهذا خطأ بل هذا هو القياس الذي ننكره ونبطله فمزجوا المعاني وأوقعوا على الباطل اسم معنى صحيح وعلى معنى صحيح اسم معنى باطل، فمزجوا الأشياء وخلطوا ما شاؤوا. ولم يصفوا بعض المعاني من بعض، فاختلط الأمر عليهم وتاهوا ما شاؤوا والحمد لله على هدايته وتوفيقه وما كنا لنهتدي لولا أن هدانا الله. وبالله تعالى التوفيق والحول والقوة به عز وجل

[4]**Translator's note (L2117):** The supplied فقط جاء is awkward: it can be read literally as 'through sense perception alone, the text has come,' as translated, but فقد جاء, 'the text has indeed come,' may have been intended. The final clause is syntactically awkward and continues into the following unit. It has been construed as denying the need to establish reason and the senses through scripture on the premise that their validity depends on scripture. The supplied wording has not been replaced with a conjectural correction.

[5]**Qur'an references (L2116):** Qur'an 3:185 (Ali 'Imran); Qur'an 7:195 (Al-A'raf).

as much as they pleased. Praise belongs to Allah for His guidance and His granting of success. We would not have been guided had Allah not guided us. Success comes through Allah Most High, and power and strength are through Him, Mighty and Majestic.[6]

[6]**Translator's note (L2120):** The physical example uses النواريات, literally 'fiery things' or 'fiery substances.' Its precise physical referent is unclear; the supplied reading has been retained.

الباب 30: لزوم الشريعة ووقته

Chapter 30: Who Is Bound by Islamic Law, and When

Ibn Ḥazm · Arabic–English parallel edition

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[Chapter Thirty: The Binding Force of Islamic Law upon Every Believer and Unbeliever on Earth, and the Time at Which Religious Laws Become Binding upon a Human Being]

L2121

L2122–2126 Abu Muhammed said: Allah Most High said: “Children of Adam, take your adornment at every place of prayer, and eat and drink, but do not be excessive. He does not love those who are excessive.” Thus He Most High commanded the children of Adam collectively, as you see. And He, Mighty and Majestic, said: “Those who follow the Messenger, the unlettered Prophet, whom they find written down with them in the Torah and the Gospel: he commands them to do what is right and forbids them what is wrong, makes good things lawful for them and foul things unlawful for them, and removes from them their burden and the fetters that were upon them. Those who believe in him, honor him, support him, and follow the light sent down with him—those are the successful.” And He Most High said: “In gardens, they ask one another * about the criminals: * ‘What brought you into Saqar?’ * They say: ‘We were not among those who prayed, * nor did we feed the needy, * and we used to engage in vain discourse with those who engaged in it, * and we used to deny the Day of Recompense, * until there came to us certainty.’” Thus He Most High explicitly stated, as you see, that He punishes those who deny the Day of Recompense—and they are undoubtedly the unbelievers—for their abandonment of prayer and their abandonment of feeding the needy. And He, Mighty and Majestic, said: “Then thread him into a chain whose length is seventy cubits. * He did not believe in Allah the Magnificent, * nor did he urge the feeding of the needy.” Thus He Most High also explicitly stated, as you see, that the class of unbelievers are punished because they did not feed the needy. And He said: “We have sent you only to all humankind, as a bearer of good tidings and a warner, but most people do not know.” And He Most High commanded him to say: “Say: ‘People, I am the Messenger of Allah to you all—He to whom belongs the dominion of the heavens and the earth. There is no deity except Him; He gives life and causes death. So believe in Allah and His Messenger, the unlettered Prophet who believes in Allah and His words, and follow him so that you may be

[الباب الثلاثون في لزوم الشريعة الإسلامية لكل مؤمن وكافر في الأرض ووقت لزوم الشرائع للإنسان]

قال أبو محمد: قال الله تعالى: {يابني آدم خذوا زينتكم عند كل مسجد وكلوا وشربوا ولا تسرفوا إنه لا يحب لمسرفين} فأمر تعالى بني آدم جملة كما ترى وقال عز وجل {لذين يتبعون لرسول لنبي لأمي لذي يجدونه مكتوبا عندهم في لتوراة ولإنجيل يأمرهم بلمعروف وينهاهم عن لمنكر ويحل لهم لطيبات ويحرم عليهم لخبآئث ويضع عنهم إصرهم ولأغلال لتي كانت عليهم فلذين آمنوا به وعزروه ونصروه وتبعوا لنور لذي أنزل معه أولئك هم لمفلحون} وقال تعالى {في جنات يتسآءلون * عن المجرمين * ما سلككم في سقر * قالوا لم نك من المصلين * ولم نك نطعم المسكين * وكنا نخوض مع الخآئضين * وكنا نكذب بيوم الدين * حتى أتانا اليقين} فنص تعالى كما ترى أنه يعذب المكذبين بيوم الدين وهم الكفار بلا شك على تركهم الصلاة، وترك إطعام المسكين، وقال عز وجل: {ثم في سلسلة ذرعها سبعون ذراعا فاسلكوه * إنه كان لا يؤمن بلله لعظيم * ولا يحض على طعام لمسكين} فنص تعالى كما ترى أيضا على أن نوع الكفار معذبون لأنهم لم يطعمون المساكين، وقال: {ومآ أرسلناك إلا كآفة للناس بشيرا ونذيرا ولكن أكثر لناس لا يعلمون} وأمره تعالى أن يقول {قل يأيها لناس إني رسول لله إليكم جميعا لذي له ملك لسماوات ولأرض لا إله إلا هو يحيي ويميت فآمنوا بلله ورسوله لنبي لأمي لذي يؤمن بلله وكلماته وتبعوه لعلكم تهتدون} هو نص جلي على لزوم شرائع الإسلام كلها للكفار كلزومها للمؤمنين، إلا أن منها ما لا يقبل منهم إلا بعد الإسلام، كالصلاة والصيام والحج، وهم في ذلك كالجنب وتارك النية والمحدث لا تقبل منه صلاة حتى يطهر، ولا صيام ولا حج إلا بإحداث النية في ذلك وقال تعالى {قاتلوا لذين لا يؤمنون بلله ولا بليوم لآخر ولا يحرمون ما

guided.'" This is an explicit text establishing that all the laws of Islam are binding upon unbelievers just as they are binding for believers, except that some of them are not accepted from them until after they embrace Islam, such as prayer, fasting, and pilgrimage. In this they are like someone in a state of major ritual impurity, someone who omits the intention, or someone in a state of minor ritual impurity: no prayer is accepted from him until he purifies himself, nor any fasting or pilgrimage unless he forms the intention for it. The Exalted said: {Fight those who do not believe in Allah or the Last Day, do not forbid what Allah and His Messenger have forbidden, and do not profess the religion of truth, among those who were given the Scripture, until they pay the tribute by hand, while humbled.} Thus the Exalted expressly stated that they are disobedient because they do not forbid what Allah and His Messenger ﷺ have forbidden. The Exalted said: {Today the good things have been made lawful for you. The food of those who were given the Scripture is lawful for you, and your food is lawful for them; and chaste women among the believing women and chaste women among those who were given the Scripture before you, when you give them their bridal dues, being chaste, neither committing fornication nor taking secret lovers. Whoever disbelieves in faith, his work has come to nothing, and in the Hereafter he will be among the losers.} It is therefore established that our food is lawful for them, whether they wish it or refuse it. The Exalted said: {And judge between them by what Allah has sent down, and do not follow their desires. Beware of them, lest they tempt you away from some of what Allah has sent down to you. If they turn away, know that Allah only intends to afflict them for some of their sins. Indeed, many people are defiantly disobedient.} We have transmitted from Ibn ʿAbbas, through a good chain of transmission, that this verse abrogates the Exalted's statement: {They listen avidly to falsehood and consume illicit gain. If they come to you, judge between them or turn away from them. If you turn away from them, they will not harm you at all. If you judge, judge between them with equity. Indeed, Allah loves those who act equitably.} Since all this has been established with certainty, it is obligatory that the prescribed punishments be inflicted upon them for wine and unlawful sexual intercourse, that their wines be poured away, that their pigs be killed, that their usurious transactions be invalidated, and that,

حرم الله ورسوله ولا يدينون دين لحق من لذين أوتوا لكتاب حتى يعطوا لجزية عن يد وهم صاغرون} فنص تعالى على أنهم عصاة إذ لا يحرمون ما حرم الله ورسوله صلى الله عليه وسلم وقال تعالى {ليوم أحل لكم لطيبات وطعام لذين أوتوا لكتاب حل لكم وطعامكم حل لهم ولمحصنات من لمؤمنات ولمحصنات من لذين أوتوا لكتاب من قبلكم إذآ آتيتموهن أجورهن محصنين غير مسافحين ولا متخذي أخدان ومن يكفر بلإيمان فقد حبط عمله وهو في لآخرة من لخاسرين} فصح أن طعامنا حل لهم شاؤوا أو أبوا وقال تعالى {وأن حكم بينهم بمآ أنزل لله ولا تتبع أهوآءهم وحذرهم أن يفتنوك عن بعض مآ أنزل لله إليك فإن تولوا فعلم أنما يريد لله أن يصيبهم ببعض ذنوبهم وإن كثيرا من لناس لفاسقون} وروينا عن ابن عباس بسند جيد أن هذه الآية ناسخة لقوله تعالى {سماعون للكذب أكالون للسحت فإن جآءوك فحكم بينهم أو أعرض عنهم وإن تعرض عنهم فلن يضروك شيئا وإن حكمت فحكم بينهم بلقسط إن لله يحب لمقسطين} وإذا قد صح كل هذا بيقين فواجب أن يحدوا على الخمر والزنى، وأن تراق خمورهم، وتقتل خنازيرهم، ويبطل رباهم، ويلزمون من الأحكام كلها في النكاح والمواريث والبيوع والحدود كلها وسائر الأحكام، مثل ما يلزم المسلمون، ولا فرق، ولا يجوز غير هذا، وأن يؤكل ما ذبحوا من الأرانب، وما نحروا من الجمال، ومن كل ما لا يعتقدون تحليله، لأن كل ذلك حلال لهم بلا شك، ومن خالف قولنا فهو مخطىء عند الله عز وجل بيقين، وقد أنكر تعالى ذلك عليهم فقال تعالى {أفحكم لجاهلية يبغون ومن أحسن من لله حكما لقوم يوقنون} وكل من أباح لهم الخمر ثم لم يرض حتى أغرمها المسلم إذا أراقها عليهم، فقد حكم بحكم الجاهلية وترك حكم الله ورسوله صلى الله عليه وسلم لحكم الطاغوت والشيطان الرجيم نعوذ بالله من ذلك، مع أن خصومنا في هذا يتناقضون أقبح تناقض، فيحدونهم في القذف والسرقة كما يحدون المسلمين،

in all the rulings concerning marriage, inheritance, sales, all prescribed punishments, and all other rulings, they be bound by the same obligations as Muslims, without distinction. Nothing else is permissible. It is also obligatory that what they slaughter of rabbits, what they sacrifice of camels, and everything else whose lawfulness they do not acknowledge be eaten, for all of this is lawful for them without doubt. Whoever opposes our position is certainly in error in the sight of Allah, Mighty and Majestic. The Exalted has indeed condemned this in them, saying: {Is it the judgment of the age of ignorance that they seek? Who is better than Allah in judgment for a people who possess certainty?} Whoever permits wine to them, and then is not satisfied until he makes a Muslim pay compensation for it if he pours it away to their detriment, has judged by the judgment of the age of ignorance and abandoned the judgment of Allah and His Messenger ﷺ for the judgment of the false god and the accursed Satan. We seek refuge in Allah from that. Moreover, our opponents in this contradict themselves in the most shameful manner: they inflict the prescribed punishments upon them for accusations of unlawful sexual intercourse and for theft, just as they inflict them upon Muslims, yet they do not inflict the prescribed punishments upon them for unlawful sexual intercourse and wine. They eat some parts of a sheep ritually slaughtered by a Jew but do not eat other parts, thereby giving effect to the Jews' falsehood and abandoning Allah the Exalted's express declaration that our food is lawful for them and their food lawful for us. In Allah the Exalted we seek refuge from such statements, so grossly erroneous. The Exalted said: {And when your Lord took from the children of Adam, from their backs, their descendants, and made them testify concerning themselves:

ولا يحدونهم في الزنى والخمر، ويأكلون بعض الشاة التي يذكيها اليهودي، ولا يأكلون بعضها، إنفاذا لإفك اليهود. وتركا لنص الله تعالى على أن طعامنا حل لهم، وطعامهم حل لنا، وبالله تعالى نعوذ من مثل هذه الأقوال الفاحشة الخطأ، وقال تعالى: {وإذ أخذ ربك من بني آدم من ظهورهم ذريتهم وأشهدهم على أنفسهم ألست بربكم قالوا بلى شهدنآ أن تقولوا يوم لقيامة إنا كنا عن هذا غافلين}

“Am I not your Lord?” They said: “Yes indeed; we testify”—lest you say on the Day of Resurrection: “We were unaware of this.”}[1][2][3][4][5][6]

L2127–2128 The Exalted said: {Remember Allah’s favor upon you and His covenant by which He bound you, when you said: “We hear and obey.” Fear Allah; indeed, Allah knows what is within the breasts.} The Exalted said: {The coloring of Allah—and who is better than Allah in coloring? And Him we worship.} The Exalted said: {So set your face toward the religion, inclining to the true faith: the original disposition of Allah upon which He originated people. There is no changing Allah’s creation. That is the upright religion, but most people

وقال تعالى {وذكروا نعمة الله عليكم وميثاقه لذي واثقكم به إذ قلتم سمعنا وأطعنا وتقوا الله إن الله عليم بذات لصدور} وقال تعالى {صبغة الله ومن أحسن من الله صبغة ونحن له عابدون} وقال تعالى {فأقم وجهك للدين حنيفا فطرة الله لتي فطر لناس عليها لا تبديل لخلق لله ذلك لدين لقيم ولكن أكثر لناس لا يعلمون} وحدثنا عبد الله بن يوسف عن أحمد بن فتح، عن عبد الوهاب بن عيسى عن أحمد بن محمد، عن أحمد بن علي، عن مسلم، ثنا أبو غسان المسمعي، ومحمد بن المثنى، ومحمد بن بشار بن عثمان، واللفظ لأبي غسان، وابن المثنى قالا: ثنا معاذ بن هشام حدثني أبي عن قتادة عن مطرف بن عبد الله بن عبد الله بن الشخير عن عياض بن حمار المجاشعي أن رسول الله صلى الله عليه وسلم قال ذات يوم في خطبته ألا إن ربي أمرني أن أعلمكم ما تجهلون مما علمني يومي هذا، كل مال نحلته عبدا حلال، وإني خلقت عبادي حنفاء كلهم، وإنهم أتتهم الشياطين فاجتالتهم عن دينهم وحرمت عليهم ما أحللت لهم. قال أبو محمد: عياض بن حمار هذا من بني تميم فكان صديق النبي صلى الله عليه وسلم في الجاهلية وحرميه ومعنى حرميه أن عياضا كان من الحلة وكان النبي صلى الله عليه وسلم من الحمس وكان لكثير من رجال الحلة إخوان من الحمس يطوفون في ثيابهم فكان كل صديق منهم يقال له: هذا حرمي فلان، فكان عياض يطوف إذا طاف بالكعبة في ثياب النبي صلى الله عليه وسلم وبالسند المذكور إلى مسلم ثنا أبو بكر بن أبي شيبة، نا أبو معاوية، عن الأعمش، عن أبي صالح عن أبي هريرة قال قال رسول الله صلى الله عليه وسلم ما من مولود يولد إلا على هذه الملة حتى يبين عنه لسانه.

[1] **Translator’s note (L2122):** The Qur’anic quotations contain repeated omissions of letters, particularly initial alifs in definite articles, as well as وشربوا where the recognizable verse has واشربوا, ‘and drink.’ The recognizable wording is translated; these transcription defects are noted rather than reproduced as unintelligible English. The final Qur’anic quotation continues into the following unit.

[2] **Translator’s note (L2123):** The Qur’anic quotations continue to exhibit the repeated omission of initial alifs and other letters seen in the preceding unit; recognizable words have been translated. The quoted verse says that the person did not urge the feeding of the needy; the author’s ensuing formulation says that unbelievers did not feed the needy. This difference has been preserved. The supplied لم يطعمون is grammatically irregular after لم; its evident meaning, ‘they did not feed,’ has been translated.

[3] **Translator’s note (L2124):** The Qur’anic quotations throughout the supplied text repeatedly omit written alifs, including those in the divine name and the definite article. These have been treated as transcriptional spelling defects where the intended words are unambiguous. The opening and closing phrases continue across segment boundaries.

[4] **Translator’s note (L2125):** “Certainly” in the preceding segment renders بيقين, which appears here after “Allah, Mighty and Majestic” in the Arabic. Its placement in English allows the sentence to join naturally. The final clause continues into the next segment.

[5] **Translator’s note (L2126):** The opening عليهم is an apparent transposition of عليهم, understood here as referring to the owners whose wine is poured away. “Accusations of unlawful sexual intercourse” renders the legal term القذف, referring to accusations subject to a prescribed punishment.

[6] **Qur’an references (L2122):** Qur’an 7:31 (Al-A’raf); Qur’an 6:141 (Al-An’am); Qur’an 74:40 (Al-Muddaththir); Qur’an 74:41 (Al-Muddaththir); Qur’an 74:42 (Al-Muddaththir); Qur’an 74:43 (Al-Muddaththir); Qur’an 74:44 (Al-Muddaththir); Qur’an 74:45 (Al-Muddaththir); Qur’an 69:32 (Al-Haqqah); Qur’an 34:28 (Saba); Qur’an 7:158 (Al-A’raf); Qur’an 9:29 (At-Tawbah); Qur’an 5:5 (Al-Ma’idah); Qur’an 5:49 (Al-Ma’idah); Qur’an 5:42 (Al-Ma’idah); Qur’an 7:172 (Al-A’raf).

do not know.} ʿAbd Allah ibn Yusuf related to us, from Ahmad ibn Fath, from ʿAbd al-Wahhab ibn ʿIsa, from Ahmad ibn Muhammed, from Ahmad ibn ʿAli, from Muslim: Abu Ghassan al-Mismaʿi, Muhammed ibn al-Muthanna, and Muhammed ibn Bashshar ibn ʿUthman related to us—the wording is that of Abu Ghassan and Ibn al-Muthanna—who both said: Muʿadh ibn Hisham related to us: My father related to me, from Qatada, from Mutarrif ibn ʿAbd Allah ibn ʿAbd Allah ibn al-Shikhkhir, from ʿIyad ibn Himar al-Mujashiʿi, that the Messenger of Allah ﷺ said one day in his sermon: "Take heed! My Lord has commanded me to teach you what you do not know, from what He has taught me this day: 'Every possession that I have bestowed upon a servant is lawful. I created My servants all inclining to the true faith, but the devils came to them and turned them away from their religion and forbade them what I had made lawful for them.'" Abu Muhammed said: This ʿIyad ibn Himar belonged to the Banu Tamim. He was the Prophet's ﷺ friend in the age of ignorance and his sanctuary associate. The meaning of "his sanctuary associate" is that ʿIyad belonged to the Hilla, whereas the Prophet ﷺ belonged to the Hums. Many men of the Hilla had brethren among the Hums in whose clothes they performed the circumambulation. Each such friend would be called "the sanctuary associate of so-and-so." Thus, when ʿIyad circumambulated the Kaʿba, he would do so in the Prophet's ﷺ clothes. Through the aforementioned chain of transmission to Muslim: Abu Bakr ibn Abi Shayba related to us: Abu Muʿawiya related to us, from al-Aʿmash, from Abu Salih, from Abu Hurayra, who said: The Messenger of Allah ﷺ said:

"No newborn is born except upon this religious community's faith, until his tongue expresses what is within him."[789]

L2129–2131 Abu Muhammed said: These verses that we have recited and the two reports that we have mentioned explain what the Prophet ﷺ meant by his statement: "No newborn is born except upon the original disposition; then his parents make him a Jew, a Christian, and a Magian, just as an animal gives birth to an animal with all its parts intact. Do you perceive among them any with parts cut off?" ʿAbd al-Razzaq transmitted it from Maʿmar, from Hammam ibn Munabbih, from Abu Hurayra, from the Prophet ﷺ: "Whoever is born is born upon this original disposition." It includes: "Until you yourselves are the ones who mutilate them." All this therefore establishes necessarily that all people are born upon Islam. This is the interpretation of the Exalted's statement: {We offered the Trust to the heavens, the earth, and the mountains, but they refused to bear it and were apprehensive of it; yet the human being bore it. Indeed, he was wrongdoing and ignorant.} Acceptance of the Islamic religious community's faith is thus the Trust. Allah the Exalted created all souls together—they being the perceiving, rational, discerning entities—then bound them by a covenant to Islam, and they accepted it. He then settled them in place until He transferred each soul to its body. It remained therein for as long as it remained, then returns to its abode by the lowest heaven, where the Prophet ﷺ saw them on the night of the Night Journey. Those destined for felicity are in the place on the right, in joy and well-being, and those destined for misery are in the place on the left, in distress and hardship, until the Day of Resurrection. They then take up their abodes in Paradise

قال أبو محمد: هذه الآيات التي تلونا، والحديثان اللذان ذكرنا يبينان مراد النبي صلى الله عليه وسلم بقوله ما من مولود يولد إلا على الفطرة فأبواه يهودانه وينصرانه ويمجسانه كما تنتج البهيمة بهيمة جمعاء هل تحسون فيها من جدعاء ورواه عبد الرزاق عن معمر عن همام بن منبه عن أبي هريرة عن النبي صلى الله عليه وسلم من يولد يولد على هذه الفطرة وفيه حتى تكونوا أنتم تجدعونها فصح بهذا كله ضرورة أن الناس كلهم مولودون على الإسلام وهذا تأويل قوله تعالى {إنا عرضنا لأمانة على لسماوات ولأرض ولجبال فأبين أن يحملنها وأشفقن منها وحملها لإنسان إنه كان ظلوما جهولا} فقبول الملة الإسلامية هي الأمانة، وأن الله تعالى خلق الأنفس كلها جملة، وهي الحساسة العاقلة المميزة، ثم واثقها بالإسلام فقبلته، ثم أقرها حتى نقل كل نفس منها إلى جسدها فأقامت فيه ما أقامت، ثم تعود إلى مقرها عند سماء الدنيا حيث رآها النبي صلى الله عليه وسلم ليلة الإسراء فأهل السعادة في محل اليمين في سرور وخير، وأهل الشقاء في محل الشمال في نكد ومشقة إلى يوم القيامة، فينزلون منازلهم من الجنة والنار بعد أن تكسي أجسادا على العظام المخرجة من القبور بعد أن أرمت وهذا نص قوله تعالى: {ولقد خلقناكم ثم صورناكم ثم قلنا للملائكة سجدوا لآدم فسجدوا إلا إبليس لم يكن من لساجدين} ونص قوله تعالى {وأما إن كان من أصحاب ليمين * فسلام لك من أصحاب ليمين} وقال تعالى {فأصحاب ليمنة ما أصحاب ليمنة * وأصحاب لمشأمة ما أصحاب لمشأمة} وقوله تعالى {وإذ أخذ ربك من بني آدم من ظهورهم ذريتهم وأشهدهم على أنفسهم ألست بربكم قالوا بلى شهدنا أن تقولوا يوم لقيامة إنا كنا عن هذا غافلين} بيان جلي أن النفوس إذا حلت الأجساد الكدرة الأرضية في الدنيا، فإنها ينتقص تمييزها، ويذهب ذكرها لما سلف، وأنها إذا فارقتها صح حسها، وذكا تمييزها

[7] **Translator's note (L2127):** "The coloring of Allah" preserves the imagery of صبغة rather than replacing it with an interpretive rendering such as "religion." The chain gives "Mutarrif ibn ʿAbd Allah ibn ʿAbd Allah ibn al-Shikhkhir," repeating ʿAbd Allah. The repetition has been preserved; it appears to be a transmission or transcription error. The divine speech quoted within the prophetic report continues into the next segment.

[8] **Translator's note (L2128):** "Sanctuary associate" renders حرمي, the pre-Islamic relationship explained by the author. Hilla and Hums designate the groups distinguished in that explanation. The final expression حتى يبين عنه لسانه is compressed: literally, "until his tongue makes [it] clear concerning him." The translation preserves its reference to the child's own verbal expression.

[9] **Qur'an references (L2127):** Qur'an 5:7 (Al-Ma'idah).

and the Fire, after being clothed with bodies upon the bones brought out of the graves after they have decayed. This is the express meaning of the Exalted's statement: {We created you, then formed you, then said to the angels: "Prostrate yourselves before Adam." They prostrated themselves, except Iblis; he was not among those who prostrated themselves.} And the express meaning of the Exalted's statement: {And if he is among the companions of the right, then peace be upon you from the companions of the right.} The Exalted said: {Then the companions of the right—what are the companions of the right! And the companions of the left—what are the companions of the left!} His statement, exalted is He: {And when your Lord took from the children of Adam, from their backs, their descendants, and made them testify concerning themselves: "Am I not your Lord?" They said: "Yes indeed; we testify"—lest you say on the Day of Resurrection: "We were unaware of this"} is a clear explanation that, when souls inhabit the turbid, earthly bodies in this world, their discernment diminishes and their recollection of what preceded departs; and that, when they leave them, their perception becomes sound, their discernment keen, and their apprehension clear. The Exalted said: {This worldly life is only diversion and play; and indeed the abode of the Hereafter is truly life, if only they knew.} The Exalted has declared that this world is a deception. Glory, then, be to the Originator and Governor of all; there is no deity but Him.[10][11][12]

وصفا إدراكها قال تعالى {وما هذه لحياة لدنيآ إلا لهو ولعب وإن لدار لآخرة لهي لحيوان لو كانوا يعلمون} وأخبر تعالى أن الدنيا غرور، فسبحان مخترع الكل ومدبره، لا إله إلا هو.

L2132–2133 On this and other grounds, we have said that no one is to be left adhering to any religion other than Islam except someone for whom an authentic text

فبهذا وبغيره قلنا: ألا يترك أحد على غير دين الإسلام إلا من صح النص على إقراره، وأن النبي عليه السلام أقرهم، فأوجبنا ألا نقبل جزية ولا نقر على غير الإسلام من خرج من دين كتابي إلى دين كتابي آخر ولا من دان آباؤه بعد مبعث النبي صلى الله عليه وسلم بدين كتابي انتقلوا إليه عن كفرهم ولا من كان في أجداده أو جداته من أي جهة كان مسلم أو مسلمة وإن بعد وبعدت، ولا من سبي وهو بالغ، وسواء سبي مع أبويه أو مع أحدهما، ولا يترك كافر بتباعه أصلا، ولا يقبل من كل من ذكرنا إلا الإسلام أو السيف، لأن الإسلام دين كل مولود، وقد قال عليه السلام: من غير دينه فاقتلوه وقال تعالى {ومن يبتغ غير لإسلام دينا فلن يقبل منه وهو في لآخرة

[10] **Translator's note (L2129):** The supplied report says "Whoever is born is born" (من يولد يولد); this wording has been preserved rather than replaced with the wording of the preceding report. In "mutilate them," the Arabic feminine singular pronoun refers back to the animal imagery. The final word تكسي is read contextually as a passive form meaning "are clothed"; the description continues into the next segment.

[11] **Translator's note (L2130):** The opening preserves the source's compressed description of souls being clothed with bodies "upon the bones." The quotation beginning "Then the companions of the right" uses فأصحاب where the standard Qur'anic wording has وأصحاب; the supplied connective has been translated. The final Qur'anic quotation continues into the next segment.

[12] **Qur'an references (L2129):** Qur'an 33:72 (Al-Ahzab); Qur'an 7:11 (Al-A'raf); Qur'an 56:90 (Al-Waqi'ah); Qur'an 7:172 (Al-A'raf).

من الخاسرين} فحرم القبول من أحد غير الإسلام إلا من جاء النص بتركه عليه، وأنه مخصوص من هذه الآية، والدلائل على هذا تكثر جدا وقوله تعالى {لا إكراه في الدين قد تبين الرشد من الغي فمن يكفر بالطاغوت ويؤمن بالله فقد استمسك بالعروة الوثقى لا انفصام لها والله سميع عليم} مخصوص بالنصوص الثابتة أن رسول الله صلى الله عليه وسلم أكره غير أهل الكتاب على الإسلام أو السيف، وأيضا فإن الأمة كلها مجمعة على إكراه المرتد على الإسلام، والقوم الذين أخبر عز وجل أنهم أوتوا الكتاب، ثم أمر تعالى بقتالهم حتى يعطوا الجزية عن يد، قد ماتوا وحدث غيرهم، والحس يشهد بأن هؤلاء الذين هم أبناء أولئك ليسوا الذين أوتوا التوراة والإنجيل والصحف والزبور، بل هم غيرهم بلا شك فإنما أقروا بإقرار النبي صلى الله عليه وسلم لمن تناسل منهم وأمر بذلك فيمن توالد منهم فقط لا نص فيه فهو داخل في قوله تعالى {فإذا انسلخ الأشهر الحرم فاقتلوا المشركين حيث وجدتموهم وخذوهم واحصروهم واقعدوا لهم كل مرصد فإن تابوا وأقاموا الصلاة وآتوا الزكاة فخلوا سبيلهم إن الله غفور رحيم}

establishes that he is to be permitted to remain in it and that the Prophet, peace be upon him, permitted them to remain in it. We therefore held it obligatory neither to accept the poll tax nor to permit continued adherence to anything other than Islam in the case of anyone who has left one scriptural religion for another scriptural religion; anyone whose forefathers, after the Prophet's ﷺ mission began, adopted a scriptural religion, converting to it from their unbelief; anyone among whose grandfathers or grandmothers, on any side, there was a Muslim man or woman, however remote he or she may have been; or anyone taken captive as an adult, whether captured with both parents or with one of them. Nor is an unbeliever to be left as such on account of his following others at all. Nothing is to be accepted from any of those we have mentioned except Islam or the sword, because Islam is the religion of every newborn. He, peace be upon him, said, "Whoever changes his religion, kill him." And the Exalted said, "Whoever seeks a religion other than Islam, it will never be accepted from him, and in the Hereafter he will be among the losers." He thus prohibited accepting anything other than Islam from anyone, except someone whom a text permits to be left adhering to his religion and who is thereby excepted from the general scope of this verse. The proofs for this are exceedingly numerous. His statement, the Exalted, "There is no compulsion in religion. Right guidance has become distinct from error. Whoever disbelieves in false objects of worship and believes in Allah has grasped the firmest handhold, which cannot break. Allah is All-Hearing, All-Knowing," is restricted in its scope by the established texts stating that the Messenger of Allah ﷺ compelled those other than the People of the Book to accept Islam or face the sword. Furthermore, the entire community unanimously agrees on compelling the apostate to accept Islam. The people whom He, Mighty and Majestic, stated had been given the Scripture, and whom the Exalted then commanded to be fought until they paid the poll tax by hand, have died, and others have come into existence. Sense perception attests that these people, who are the children of those people, are not the ones who were given the Torah, the Gospel, the Scrolls, and the Psalms; rather, they are undoubtedly other people. They were therefore permitted to remain only because the Prophet ﷺ permitted their descendants to remain and commanded this concerning those born of them alone. There is no text

concerning him, so he falls within His statement, the Exalted: "When the sacred months have elapsed, kill the polytheists wherever you find them, seize them, besiege them, and lie in wait for them at every place of ambush. But if they repent, establish prayer, and give the obligatory alms, then let them go their way. Surely Allah is All-Forgiving, Merciful."[13][14][15]

L2134 This is clear. Allah the Exalted grants success; there is no god but Him. The Exalted has expressly stated that He does not allow the work of any worker among us, male or female, to go to waste. We transmitted, through the previously mentioned chain to Muslim, who said: Uthman ibn Abi Shaybah narrated to us; Jarir narrated to us, from Mansur, from Abu Wa'il, from Abd Allah ibn Mas'ud, who said: Some people said to the Messenger of Allah ﷺ, "Messenger of Allah, will we be held accountable for what we did in the time of ignorance?" He said, "Whoever among you does well in Islam will not be held accountable for it; whoever does badly will be held accountable for his deeds in the time of ignorance and in Islam."

L2135–2143 Through the same chain to Muslim: Hasan al-Hulwani and Abd ibn Humayd narrated to us—Hasan said, "Ya'qub ibn Ibrahim ibn Sa'd narrated to us," while Abd said, "Ya'qub ibn Ibrahim ibn Sa'd narrated to me"—who said: My father narrated to us, from Salih, namely Ibn Kaysan, from Ibn Shihab, who said: Urwah ibn al-Zubayr informed us that Hakim ibn Hizam told him that he said to the Messenger of Allah ﷺ, "O Messenger of Allah, consider acts through which I used to practice devotion in the time of ignorance, such as charity, emancipating slaves, or maintaining ties of kinship: is there any reward for them?" The Messenger of Allah ﷺ said, "You have embraced Islam with the good you previously performed." Through the same chain to Muslim: Ibn Abi Umar narrated to us; Sufyan, namely Ibn Uyaynah, narrated

[13] **Translator's note (L2132):** The reading بتباعه is unclear. It has been provisionally rendered as referring to following others; the wording may be corrupt, and its precise legal implication cannot be securely determined.

[14] **Translator's note (L2133):** The transition at فقط لا نص فيه فهو is abrupt: "There is no text concerning him" has no explicit antecedent. The apparent sense concerns someone outside the descendants just mentioned, but the supplied Arabic does not state that qualification.

[15] **Qur'an references (L2132):** Qur'an 3:85 (Ali 'Imran); Qur'an 9:5 (At-Tawbah).

وهذا بين والله تعالى الموفق لا إله إلا هو، وقد نص تعالى على أنه لا يضيع عمل عامل منا من ذكر أو أنثى. وروينا بالسند المتقدم إلى مسلم قال: ثنا عثمان بن أبي شيبة، نا جرير، عن منصور، عن أبي وائل، عن عبد الله بن مسعود قال قال أناس لرسول الله صلى الله عليه وسلم يا رسول الله أنؤاخذ بما عملنا في الجاهلية؟ قال: من أحسن منكم في الإسلام فلا يؤاخذ به، ومن أساء أخذ بعمله في الجاهلية والإسلام.

وبه إلى مسلم نا حسن الحلواني، وعبد بن حميد، قال: حسن، نا وقال عبد: ثني يعقوب بن إبراهيم بن سعد، ثنا أبي عن صالح هو ابن كيسان عن ابن شهاب قال: أنبأ عروة بن الزبير: أن حكيم بن حزام أخبره أنه قال لرسول الله صلى الله عليه وسلم أي رسول الله أرأيت أمورا كنت أتحنث بها في الجاهلية من صدقة، أو عتاقة أو صلة رحم أفيها أجر فقال رسول الله صلى الله عليه وسلم أسلمت على ما أسلفت من خير وبه إلى مسلم ثنا ابن أبي عمر، ثنا سفيان هو ابن عيينة، عن عبد الله بن عمير، عن عبد الله بن الحارث هو ابن نوفل قال: سمعت العباس بن عبد المطلب يقول: قلت يا رسول الله: إن أبا طالب كان يحوطك وينصرك فهل نفعه ذلك؟ قال: نعم، وجدته في غمرات من النار فأخرجته إلى ضحضاح. وقد رواه أيضا وكيع، ويحيى بن سعيد القطان، عن سفيان الثوري، عن عبد الملك بن عمير بالسند المذكور، ورواه أيضا عبد الله بن خباب عن أبي سعيد الخدري عن النبي صلى الله عليه وسلم في أبي طالب

to us, from Abd Allah ibn Umayr, from Abd Allah ibn al-Harith, namely Ibn Nawfal, who said: "I heard al-Abbas ibn Abd al-Muttalib say: I said, 'Messenger of Allah, Abu Talib used to protect you and support you. Has that benefited him?' He said, 'Yes. I found him in the depths of the Fire and brought him out into a shallow part.'" Waki' and Yahya ibn Sa'id al-Qattan also transmitted it from Sufyan al-Thawri, from Abd al-Malik ibn Umayr, through the chain mentioned. Abd Allah ibn Khabbab also transmitted it from Abu Sa'id al-Khudri, from the Prophet ﷺ, who said concerning Abu Talib, "Perhaps my intercession will benefit him on the Day of Resurrection, so that he will be placed in a shallow part of the Fire reaching his ankles, from which his brain will boil." Abu Muhammed said: Allah the Exalted said, "We shall surely make them taste the lesser punishment before the greater punishment, so that they may return." And the Exalted said, "The Fire: they are exposed to it morning and evening. And on the day the Hour comes: 'Admit Pharaoh's people to the most severe punishment.'" And the Exalted said, "The hypocrites are in the lowest depth of the Fire, and you will never find a helper for them." It is thus established by necessity that there can be nothing more severe except in relation to something less severe, and that the lowest depth has a higher depth above it, because all this belongs to the category of relation. And it is established with certainty by His statement, the Exalted, "Whoever comes with an evil deed, their faces will be cast down into the Fire. Are you recompensed for anything except what you used to do?" that people in Paradise differ in rank according to the measure of their deeds, and that, in the Fire, some suffer more severe punishment than others. The texts we have mentioned attest to this. It is also established that if someone does good while an unbeliever and then embraces Islam, that good is credited to him and recorded, and he receives recompense and reward for it; and that whoever does evil during his unbelief, then embraces Islam without desisting from those evil deeds, has all of them recorded and reckoned against him and is punished for them. This is the explicit wording of Allah the Exalted's speech which we have recited, and the explicit wording of the Prophet's ﷺ ruling when he was asked about this. It is not lawful for anyone to oppose this. Some people have raised an objection against this position on the basis of His statement, the Exalted: "Say to those who

قال لعله تنفعه شفاعتي يوم القيامة فيجعل في ضحضاح من النار يبلغ كعبيه يغلي منها دماغه. قال أبو محمد قال الله تعالى {ولنذيقنهم من لعذاب لأدنى دون لعذاب لأكبر لعلهم يرجعون} وقال تعالى {لنار يعرضون عليها غدوا وعشيا ويوم تقوم لساعة أدخلوا آل فرعون أشد لعذاب} وقال تعالى {إن لمنافقين في لدرك لأسفل من لنار ولن تجد لهم نصيرا} فصح بالضرورة أنه لا أشد إلا بالإضافة إلى ما هو أقل منه، وأن الدرك الأسفل له درك أعلى، لأن كل ذلك من باب الإضافة وصح يقينا بقوله تعالى {ومن جآء بلسيئة فكبت وجوههم في لنار هل تجزون إلا ما كنتم تعملون} أن الناس في الجنة يتفاضلون على مقدار أعمالهم، وأنهم في النار أشد عذابا من بعض، والنصوص التي ذكرناها تشهد بذلك، وصح أن من عمل خيرا وهو كافر ثم أسلم، فإن ذلك الخير محسوب له، مكتوب، وهو مثاب عليه ومأجور، وأن من عمل سوءا في كفره، ثم أسلم ولم يقلع عن تلك السيئات فإنها كلها مكتوبة عليه محسوبة، وهو معاقب عليها، وهذا نص كلام الله تعالى الذي تلونا ونص فتيا النبي صلى الله عليه وسلم إذ سئل عن ذلك وهذا ما لا يحل لأحد خلافه وقد اعترض قوم في مخالفة ذلك بقوله تعالى: {قل للذين كفروا إن ينتهوا يغفر لهم ما قد سلف وإن يعودوا فقد مضت سنة الأولين} قاله أبو محمد وهذا لا حجة فيه بل هو حجة لنا، لأنه إنما نص أنه إنما يغفر ما انتهى عنه، ومن تمادى على إساءته في إسلامه فلم ينته فلم يستحق أن يغفر له ما قد سلف، وإنما يغفر له الشرك الذي انتهى عنه فقط، ولو انتهى عن سائر إساءاته لغفرت له أيضا، وهذا نص الآية التي احتجوا بها. واعترضوا أيضا بما رويناه بالسند المتقدم إلى مسلم: ثنا أبو بكر بن أبي شيبة، ثنا حفص بن غياث، عن داود، عن الشعبي، عن مسروق، عن عائشة قالت: قلت: يا رسول الله إن ابن جدعان كان في الجاهلية يصل الرحم ويطعم المسكين، فهل ذلك نافعه؟ قال: لا ينفعه إنه لم يقل يوما رب اغفر لي خطيئتي يوم الدين. قال أبو محمد وهذا حجة لنا عليهم قوية جدا لأن النبي صلى الله عليه

disbelieve: if they desist, what has previously occurred will be forgiven them; but if they return, the precedent of the earlier peoples has already passed." Abu Muhammed said this: There is no proof for them in this; rather, it is a proof for us, because He expressly stated only that what one has desisted from is forgiven. Whoever persists in his wrongdoing after embracing Islam has not desisted and therefore has not become entitled to have what has previously occurred forgiven him. Only the associating of partners with Allah from which he has desisted is forgiven him. Had he desisted from the rest of his wrongdoing, that too would have been forgiven him. This is the explicit wording of the verse they cited as proof. They also objected on the basis of what we transmitted through the previously mentioned chain to Muslim: Abu Bakr ibn Abi Shaybah narrated to us; Hafs ibn Ghiyath narrated to us, from Dawud, from al-Sha'bi, from Masruq, from A'ishah, who said: I said, "Messenger of Allah, Ibn Jud'an used to maintain ties of kinship and feed the needy in the time of ignorance. Will that benefit him?" He said, "It will not benefit him. He never once said, 'My Lord, forgive me my sin on the Day of Recompense.'" Abu Muhammed said: This is a very strong proof for us against them, because the Prophet ﷺ made his failure to embrace Islam the sole reason why what he had done would not benefit him. It is therefore established that, had he embraced Islam, that would have benefited him just as it benefited Hakim. This is precisely our position. We have never said that Allah the Exalted rewards an unbeliever who dies in his unbelief for the good he has done. We have only said that someone who embraces Islam after his unbelief is rewarded for every good deed he performed during his unbelief. They objected on the basis of Allah the Exalted's statement: "It has indeed been revealed to you and to those before you: if you associate partners with Allah, your work will surely come to nothing, and you will surely be among the losers." Abu Muhammed said: This is a proof for us, because associating partners with Allah nullifies deeds, while Islam purifies them. This is clarified by His statement, the Exalted: "Their Lord answered them: 'I do not allow the work of any worker among you, male or female, to go to waste; you are of one another. Those who emigrated, were expelled from their homes, were harmed in My way, fought, and were killed—I shall surely expiate their evil deeds for them and admit them to gardens beneath which rivers flow, as a

وسلم إنما جعل السبب في أن ما فعل لا ينفعه أنه لم يسلم، فصح أنه لو أسلم لنفعه ذلك كما نفع حكيما. وهذا نص قولنا، ونحن لم نقل قط إن الله تعالى يأجر كافرا مات على كفره، وعلى ما عمل من خير، وإنما قلنا: من أسلم بعد كفره أجر على كل خير عمل في كفره. واعترضوا بقول الله تعالى {ولقد أوحي إليك وإلى لذين من قبلك لئن أشركت ليحبطن عملك ولتكونن من لخاسرين} قال أبو محمد وهذا حجة لنا لأن الشرك يحبط الأعمال، والإسلام يزكيها ويبين ذلك قوله تعالى {فستجاب لهم ربهم أني لا أضيع عمل عامل منكم من ذكر أو أنثى بعضكم من بعض فلذين هاجروا وأخرجوا من ديارهم وأوذوا في سبيلي وقاتلوا وقتلوا لأكفرن عنهم سيئاتهم ولأدخلنهم جنات تجري من تحتها لأنهار ثوابا من عند لله ولله عنده حسن لثواب} وإنما شرطنا أنه ينتفع بما عمل في كفره من خير إن أسلم لا إن لم يسلم. واعترضوا أيضا بما رويناه عن مسلم بالسند المذكور قال: ثنا محمد بن المثنى، ثنا أبو عاصم الضحاك بن مخلد، نا حيوة بن شريح، ثنا يزيد بن أبي حبيب، عن ابن شماسة المهري قال: حضرنا عمرو بن العاص وهو في سياقة الموت فحدثنا أنه سمع رسول الله صلى الله عليه وسلم يقول إن الإسلام يهدم ما كان قبله وإن الهجرة تهدم ما كان قبلها، وإن الحج يهدم ما كان قبله. قال أبو محمد: وإنما يهدم الإسلام الكفر الذي هو مضاده، وحديث ابن مسعود زائد على ما في حديث عمرو غير مضاد له بل هو مبين بيانا زائدا وكلام رسول الله صلى الله عليه وسلم لا يضاد بعضه بعضا ففي حديث ابن مسعود زيادة حكم على ما في حديث عمرو، من أنه من أساء في الإسلام أخذ بما عمل في الجاهلية، ومن أحسن في الإسلام سقط عنه ما عمل في الجاهلية، فإنما معنى حديث عمرو أن الإسلام يهدم ما كان قبله بشرط الإحسان فيه، وبالله تعالى التوفيق. واعترضوا أيضا بما حدثنا عبد الله بن يوسف، عن أحمد بن فتح، عن عبد الوهاب بن عيسى، عن محمد بن عيسى،

reward from Allah. With Allah is the finest reward.'" We stipulated only that he benefits from the good he performed during his unbelief if he embraces Islam, not if he does not embrace Islam. They also objected on the basis of what we transmitted from Muslim through the chain mentioned, who said: Muhammed ibn al-Muthanna narrated to us; there narrated to us Abu ʿAsim al-Dahhak ibn Makhlad narrated to us: Haywah ibn Shurayh narrated to us: Yazid ibn Abi Habib narrated to us, from Ibn Shumasah al-Mahri, who said: We were present with ʿAmr ibn al-ʿAs while he was in the throes of death, and he related to us that he had heard the Messenger of Allah ﷺ say: "Islam effaces what preceded it; emigration effaces what preceded it; and pilgrimage effaces what preceded it." Abu Muhammed said: Islam effaces only unbelief, which is its opposite. The report of Ibn Masʿud adds to what is in the report of ʿAmr without contradicting it; rather, it supplies further clarification. The words of the Messenger of Allah ﷺ do not contradict one another. Thus, in the report of Ibn Masʿud there is an additional ruling beyond what is in the report of ʿAmr: whoever does evil in Islam is held accountable for what he did in the time of ignorance, while whoever does good in Islam has what he did in the time of ignorance remitted. The meaning of the report of ʿAmr is therefore that Islam effaces what preceded it on condition that one does good within it. Through Allah Most High comes success.

They also objected on the basis of what ʿAbd Allah ibn Yusuf related to us, from Ahmad ibn Fath, from ʿAbd al-Wahhab ibn ʿIsa, from Muhammed ibn ʿIsa, from ʿAmrawayh, from Ibrahim ibn Muhammed ibn Sufyan, from Muslim: Zuhayr ibn Harb narrated to us: Yazid ibn Harun narrated to us: Hammam ibn Yahya informed us, from Qatadah, from Anas ibn Malik, who said: The Messenger of Allah ﷺ said: "Allah does not wrong a believer with respect to a good deed: he is given something for it in this world and rewarded for it in the next. As for the unbeliever, he is given in this world in proportion to the deeds he performed therein for Allah, until, when he passes into the hereafter, he has no good deed for which to be rewarded." Abu Muhammed said: This contains no proof for them, because we have not said that the unbeliever enjoys bliss in the hereafter if he dies in his unbelief. We have said only that some inhabitants of the Fire suffer more

عن عمرويه، عن إبراهيم بن محمد بن سفيان، عن مسلم، ثنا زهير بن حرب، ثنا يزيد بن هرون أنبأ همام بن يحيى، عن قتادة عن أنس بن مالك قال قال رسول الله صلى الله عليه وسلم إن الله لا يظلم مؤمنا حسنة يعطى بها في الدنيا ويجزى بها في الأخرى، وأما الكافر فيعطى بحساب ما عمل بها لله في الدنيا، حتى إذا أفضى إلى الآخرة لم يكن له حسنة يجزى بها. قال أبو محمد: وهذا لا حجة لهم فيه، لأننا لم نقل إن الكافر ينعم في الآخرة إذا مات على كفره، وإنما قلنا: إن بعض أهل النار أشد عذابا من بعض وهذا إجماع الأمة، ونص القرآن والسنة الذي من خالفه كفر، وهذا الحديث حجة لنا عليهم، لأن الكافر إذا أسلم فهو مؤمن فقد نص النبي صلى الله عليه وسلم أنه لا يظلمه حسنة مما عمل من حسنة في حال كفره ثم أسلم، فهي داخلة تحت هذا الوعد الصادق المضمون إنجازه، فصح أنه يجازى بها في الآخرة، فصح قولنا يقينا وبالله تعالى التوفيق. وكذلك قوله تعالى: {وما منعهم أن تقبل منهم نفقاتهم إلا أنهم كفروا بالله وبرسوله ولا يأتون لصلاة إلا وهم كسالى ولا ينفقون إلا وهم كارهون} قال أبو محمد: وهذا بيان جلي على أن السبب المانع من قبول نفقاتهم هو الكفر، فإذا ارتفع ذلك ارتفع السبب المانع من قبول نفقاتهم، فإذا ارتفع ذلك السبب فقد وجب قبول النفقات، وهذا نص القرآن والسنة وبالله تعالى التوفيق.

severe punishment than others. This is the consensus of the community and the explicit wording of the Qur'an and the Sunnah; whoever contradicts it commits unbelief. This report is proof for us against them, because when an unbeliever embraces Islam, he is a believer. The Prophet ﷺ explicitly stated that He does not wrong him with respect to a good deed. Whatever good deed he performed while in unbelief, after which he embraced Islam, therefore falls within this truthful promise whose fulfillment is guaranteed. It is thus established that he is rewarded for it in the hereafter. Thus is established our position with certainty. Through Allah Most High comes success. Likewise is His saying, Most High: "Nothing prevented their expenditures from being accepted from them except that they disbelieved in Allah and His Messenger, and they come to prayer only while indolent, and spend only while unwilling." Abu Muhammed said: This is a clear statement that the cause preventing the acceptance of their expenditures is unbelief. When that ceases, the cause preventing the acceptance of their expenditures ceases. When there ceases that cause, the acceptance of the expenditures necessarily follows. This is the explicit wording of the Qur'an and the Sunnah. Through Allah Most High comes success.[16][17][18][19][20][21]

L2144–2145 As for the time at which the revealed law becomes binding, it falls into two divisions: revealed law that is believed and verbally professed, and revealed

وأما وقت لزوم الشريعة فإنها تنقسم قسمين: شريعة تعتقد ويلفظ بها، وشريعة تعمل، وتنقسم هذه الشريعة قسمين: قسم في المال، وقسم على الأبدان، فأما شريعة الأموال فهي لازمة لكل صغير وكبير وجاهل بها، وعارف ومجنون وعاقل، لدلائل من النص وردت على العموم في الزكاة والإجماع على وجوب النفقات عليهم، وأما شرائع الأبدان والاعتقاد، فإنها تجب بوجهين: أحدهما: البلوغ مبلغ الرجال والنساء، وهو البلوغ المخرج عن حد الصبا. والثاني: بلوغ الشريعة إلى المرء. وأما الحدود فإنها تلزم من عرف أن الذي فعل حرام وسواء علم أن فيه حدا أم لا. وهذا لا خلاف فيه وأما من لم يعرف أن ما عمل حرام فلا حد عليه فيه، وبرهان ذلك قول الله تعالى {قل أي شيء أكبر شهادة قل لله شهيد بيني وبينكم وأوحي إلي هذا لقرآن لأنذركم به ومن بلغ أئنكم لتشهدون أن مع لله آلهة أخرى قل لا أشهد قل إنما هو إله واحد وإنني

[16] **Translator's note (L2135):** The transmission chain reads "Abd Allah ibn Umayr." The following unit gives "Abd al-Malik ibn Umayr" in a parallel transmission. Both readings have been preserved.

[17] **Translator's note (L2136):** The supplied wording وأنهم في النار أشد عذابا من بعض is syntactically awkward, literally saying that "they in the Fire are more severely punished than some." The translation expresses the apparent comparison among its inhabitants.

[18] **Translator's note (L2137):** The supplied attribution reads قاله أبو محمد, literally "Abu Muhammed said it," rather than the recurring formula قال أبو محمد, "Abu Muhammed said."

[19] **Translator's note (L2138):** The phrase وعلى ما عمل من خير is awkwardly joined to the preceding clause in the supplied Arabic. It has been understood as referring to reward for the good deeds performed.

[20] **Hadith references (L2135):** Sahih Muslim 214.

[21] **Qur'an references (L2135):** Qur'an 40:46 (Ghafir); Qur'an 27:90 (An-Naml); Qur'an 8:38 (Al-Anfal); Qur'an 39:65 (Az-Zumar); Qur'an 3:195 (Ali 'Imran); Qur'an 9:54 (At-Tawbah).

law that is put into practice. This latter revealed law falls into two divisions: a division concerning property and a division incumbent upon bodies. The revealed law concerning property is binding upon everyone, young and old, ignorant of it and knowledgeable, insane and sane, because of textual evidence expressed in general terms concerning obligatory alms, and because of the consensus that maintenance payments are obligatory upon them. As for the revealed laws concerning bodily acts and belief, they become obligatory through two things: the first is reaching the maturity of men and women, namely the attainment of puberty that takes one beyond the bounds of childhood; the second is the revealed law reaching the person. As for the prescribed punishments, they apply to anyone who knew that what he did was forbidden, whether or not he knew that it entailed a prescribed punishment. There is no disagreement about this. As for someone who did not know that what he did was forbidden, no prescribed punishment applies to him for it. The demonstration of this is the saying of Allah Most High: "Say: What thing is greatest in testimony? Say: Allah is a witness between me and you. This Qur'an has been revealed to me so that I may warn you by it, and whomever it reaches. Do you indeed testify that there are other gods alongside Allah? Say: I do not testify. Say: He is only One God, and I am quit of what you associate with Him." Allah Most High thus made the binding force of the proof depend upon the warning reaching the person. He also said, Most High: "Accept pardon, command what is recognized as right, and turn away from the ignorant." He thus commanded that the ignorant person's action be disregarded. He also said, Most High: "O you who believe, do not betray Allah and the Messenger, and betray your trusts while you know." Allah Most High thus only forbade its becoming obligatory upon him.

ʿAbd Allah ibn Yusuf related to us, from Ahmad ibn Fath, from ʿAbd al-Wahhab ibn ʿIsa, from Ahmad ibn Muhammed, from Ahmad ibn ʿAli, from Muslim: Yunus ibn al-Aʿla narrated to us: Ibn Wahb narrated to us: ʿAmr ibn al-Harith informed us that Abu Yunus related to him, from Abu Hurayrah, from the Prophet ﷺ, that he said: "By Him in whose hand is Muhammed's soul, no one of this community, Jew or Christian, hears of me and then dies without believing in that with which I was sent, without being one of the

بريء مما تشركون} فإنما جعل الله تعالى وجوب الحجة ببلوغ النذارة إلى المرء وقال تعالى {خذ لعفو وأمر بلعرف وأعرض عن لجاهلين} فأمر أن يهدر فعل الجاهل وقال تعالى {يأيها لذين آمنوا لا تخونوا لله ولرسول وتخونوا أماناتكم وأنتم تعلمون} فإنما نهى الله تعالى عن وجوب ذلك عليه. وحدثنا عبد الله بن يوسف، عن أحمد بن فتح، عن عبد الوهاب بن عيسى عن أحمد بن محمد، عن أحمد بن علي، عن مسلم، ثنا يونس بن الأعلى، ثنا ابن وهب، أنا عمرو بن الحارث أن أبا يونس حدثه عن أبي هريرة عن النبي صلى الله عليه وسلم أنه قال والذي نفس محمد بيده لا يسمع بي أحد من هذه الأمة يهودي ولا نصراني ثم يموت ولم يؤمن بالذي أرسلت به إلا كان من أهل النار قال أبو محمد فإنما أوجب النبي صلى الله عليه وسلم الإيمان به على من سمع بأمره صلى الله عليه وسلم فكل من كان في أقاصي الجنوب والشمال والمشرق وجزائر البحور والمغرب وأغفال الأرض من أهل الشرك فسمع بذكره صلى الله عليه وسلم ففرض عليه البحث عن حاله وإعلامه والإيمان به

inhabitants of the Fire." Abu Muhammed said: The Prophet ﷺ thus made belief in him obligatory only upon someone who had heard of his mission ﷺ. Thus everyone in the remotest south, north, and east, the islands of the seas, the west, and the uncharted regions of the earth, among the adherents of polytheism, who hears mention of him ﷺ, is obliged to investigate his circumstances and the signs attesting to him, and to believe in him.[222324]

L2146–2155 As for someone whom mention of him ﷺ has not reached, if he affirms Allah's oneness, he is a believer according to the original innate disposition, sound in faith, and incurs no punishment in the hereafter, and he is one of the inhabitants of Paradise. If he does not affirm Allah's oneness, he is among those concerning whom the text states that a fire will be kindled for him on the Day of Resurrection, and they will be commanded to enter it: whoever enters it will be saved, and whoever refuses will perish. Allah, Mighty and Majestic, said: "Whoever is guided is guided only for his own benefit, and whoever goes astray goes astray only to his own detriment. No bearer of a burden bears another's burden, and We would not punish until We sent a messenger." It is thus established that no unbeliever incurs any punishment at all until the warning of the Messenger ﷺ reaches him. As for someone whom mention of the Prophet Muhammed ﷺ and what he brought has reached, but who then finds no one in his country to inform him about him, he is obliged to leave it for a country in which he can ascertain the facts. Had he ﷺ not informed us that there is no prophet after him, we would have been obliged to do that concerning everyone of whom we heard that he had claimed prophethood. But we have been spared that,

أما من لم يبلغه ذكره صلى الله عليه وسلم فإن كان موحدا فهو مؤمن على الفطرة الأولى صحيح الإيمان، لا عذاب عليه في الآخرة، وهو من أهل الجنة، وإن كان غير موحد فهو من الذين جاء النص بأنه يوقد له يوم القيامة نار، فيؤمرون بالدخول فيها، فمن دخلها نجا ومن أبى هلك قال الله عز وجل {من هتدى فإنما يهتدي لنفسه ومن ضل فإنما يضل عليها ولا تزر وازرة وزر أخرى وما كنا معذبين حتى نبعث رسولا} فصح أنه لا عذاب على كافر أصلا حتى يبلغه نذارة الرسول صلى الله عليه وسلم وأما من بلغه ذكر النبي محمد صلى الله عليه وسلم وما جاء به ثم لا يجد في بلاده من يخبره عنه، ففرض عليه الخروج عنها إلى بلاد يستبرىء فيها الحقائق ولولا إخباره صلى الله عليه وسلم أنه لا نبي بعده للزمنا ذلك في كل من نسمع عنه أنه ادعى النبوة، ولكنا قد أمنا ذلك والحمد لله. وأخبرنا الصادق: إن كل من يدعي النبوة بعده كذاب، ولا سبيل إلى أن يأتي بآية معجزة، فإن ظهر من أحد منهم ذلك فهي نيرنجات، وحيل وجوهها معروفة لمن بحث عنها، ومن أهل هذه الصفة كان مسيلمة والجلاح، ومن أهلها الدجال لا حقيقة لكل ما ظهر من هؤلاء وأشباههم، وإنما هي حيل كما ذكرنا يبين ذلك حديث المغيرة بن شعبة في الدجال، وكل من كان منا في بادية لا يجد فيها من يعلمه شرائع دينه، ففرض على جميعهم، من رجل أو امرأة أن يرحلوا إلى مكان يجدون فيها فقيها يعلمهم دينهم، أو أن يرحلوا إلى أنفسهم فقيها يعلمهم أمور دينهم، وإن كان الإمام يعلم ذلك فليرحل إليهم فقيها يعلمهم قال الله تعالى {دع إلى سبيل

[22]**Translator's note (L2144):** The sentence «فإنما نهى الله تعالى عن وجوب ذلك عليه» literally says that Allah forbade its becoming obligatory upon him. This is awkward and apparently corrupt in context; it has been translated without substituting a conjectural correction. In the quotation beginning "O you who believe," the Arabic connects "betray your trusts" to the preceding prohibition without repeating the negative. The English preserves that construction.

[23]**Translator's note (L2145):** The unvocalized «وإعلامه» is ambiguous. It is rendered here as "and the signs attesting to him," understanding it as «وأعلامه»; as written, it could instead mean "and informing him," which is awkward in this context.

[24]**Qur'an references (L2144):** Qur'an 6:19 (Al-An'am).

and praise belongs to Allah. The truthful one informed us that everyone who claims prophethood after him is a liar and has no way of producing a miraculous sign. If anything of that sort appears from any of them, it consists of conjuring tricks and stratagems whose methods are known to anyone who investigates them. Musaylimah and al-Jallah were among people of this description, and the Dajjal is among them. There is no reality to anything that has appeared from these people and their like; these are only stratagems, as we have mentioned. The report of al-Mughirah ibn Shuʿbah concerning the Dajjal makes this clear. Everyone among us who lives in a desert region where he finds no one to teach him the laws of his religion is obliged—all of them, man or woman—to travel to a place where they can find a jurist to teach them their religion, or to bring a jurist to themselves to teach them the affairs of their religion. If the ruler knows of this, let him send them a jurist to teach them. Allah Most High said: "Call to the way of your Lord with wisdom and good admonition, and dispute with them in the best manner. Your Lord knows best who has strayed from His way, and He knows best those who are guided." He ﷺ sent Muʿadh and Abu Musa to Yemen, and Abu ʿUbaydah to Bahrain, to teach people the affairs of their religion. This is therefore obligatory upon rulers. He also said, Most High: "It is not for the believers to go forth all together. Why, then, should a party from every group among them not go forth, so that they may acquire understanding of the religion and warn their people when they return to them, that they may beware?" Abu Muhammed said: In our view, the attainment of puberty falls into several categories. For both a man and a woman, it occurs through a sexual dream, according to the explicit wording of what has been transmitted from him ﷺ concerning this. ʿAbd Allah ibn Rabiʿ related to us, from Muhammed ibn Ishaq the judge, from Ibn al-Aʿrabi, from Sulayman ibn al-Ashʿath: Musa, son of Ismaʿil: Wuhayb related to us, from Khalid al-Hadhdhaʾ, from Abu al-Duha, from ʿAli, from the Prophet ﷺ, who said: "The pen is lifted from three: from the sleeper until he awakens, from the child until the child experiences a nocturnal emission, and from the insane person until he recovers his reason." Abu Muhammed said: "Child" applies to the category and includes both male and female. He, peace be upon him, has stated in the hadith of ʿA'ishah that a woman experiences nocturnal emis-

ربك بلحكمة ولموعظة لحسنة وجادلهم بلتي هي أحسن إن ربك هو أعلم بمن ضل عن سبيله وهو أعلم بلمهتدين} وبعث صلى الله عليه وسلم معاذا وأبا موسى إلى اليمن وأبا عبيدة إلى البحرين، معلمين للناس أمور دينهم ففرض ذلك على الأئمة وقال تعالى {وما كان لمؤمنون لينفروا كآفة فلولا نفر من كل فرقة منهم طآئفة ليتفقهوا في لدين ولينذروا قومهم إذا رجعوا إليهم لعلهم يحذرون} قال أبو محمد: والبلوغ عندنا ينقسم أقساما: فهو في الرجل والمرأة الاحتلام بنص ما روي عنه صلى الله عليه وسلم من ذلك حدثنا عبد الله بن ربيع عن محمد بن إسحاق القاضي، عن ابن الأعرابي، عن سليمان بن الأشعث، ثنا موسى بن إسماعيل، حدثنا وهيب، عن خالد الحذاء عن أبي الضحى عن علي عن النبي صلى الله عليه وسلم قال رفع القلم عن ثلاث عن النائم حتى يستيقظ، وعن الصبي حتى يحتلم، وعن المجنون حتى يفيق. قال أبو محمد: الصبي يقع على الجنس، ويدخل فيه الذكر والأنثى، وقد أخبر عليه السلام في حديث عائشة: أن المرأة تحتلم، فصار الإحتلام بلوغا صحيحا في المرأة والرجل، وسواء احتلما من أحد عشر عاما أو أقل أو أكثر، ويكون البلوغ أيضا في المرأة بالحيض. كما حدثنا عبد الله بن ربيع، عن عمر بن عبد الملك الخولاني، عن محمد بن بكر البصري، ثنا سليمان بن الأشعث، ثنا محمد بن عبيد، ثنا حماد بن زيد، عن أيوب السختياني، عن محمد بن سيرين، أن عائشة نزلت على صفية أم طلحة الطلحات فرأت بنات لها فقالت إن رسول الله صلى الله عليه وسلم دخل وفي حجرتي جارية فألقى لي حقوه فقال شقيه شقتين فأعط هذه نصفا والفتاة التي عند أم سلمة نصفا وإني لا أراها إلا قد حاضت أو لا أراهما إلا قد حاضتا. وبه إلى أبي داود، ثنا المثنى، ثنا حجاج بن المنهال، ثنا حماد هو ابن زيد عن قتادة، عن محمد بن سيرين عن صفية بنت الحارث عن عائشة عن النبي صلى الله عليه وسلم أنه قال لا تقبل صلاة الحائض إلا بخمار قال أبو محمد:

sions. Thus a nocturnal emission constitutes valid attainment of puberty for both woman and man, whether they experience it at eleven years, younger, or older. Puberty is also attained in a woman through menstruation, as ʿAbd Allah ibn Rabiʿ related to us, from ʿUmar ibn ʿAbd al-Malik al-Khawlani, from Muhammed ibn Bakr al-Basri: Sulayman ibn al-Ashʿath related to us: Muhammed ibn ʿUbayd related to us: Hammad ibn Zayd related to us, from Ayyub al-Sakhtiyani, from Muhammed ibn Sirin, that ʿA'ishah stayed with Safiyyah, the mother of Talhah al-Talahat, and saw some daughters of hers. She said: "The Messenger of Allah ﷺ came in while there was a young girl in my chamber. He tossed his waist-wrapper to me and said: 'Tear it into two pieces, and give this girl half and the girl who is with Umm Salamah half. I think she must already have menstruated'—or, 'I think they must both already have menstruated.'" And through the same chain to Abu Dawud: al-Muthanna related to us: Hajjaj ibn al-Minhal related to us: Hammad—he is Ibn Zayd—related to us, from Qatadah, from Muhammed ibn Sirin, from Safiyyah bint al-Harith, from ʿA'ishah, from the Prophet ﷺ, that he said: "The prayer of a woman who has reached menstruating age is not accepted without a head-covering." Abu Muhammed said: The growth of pubic hair constitutes valid attainment of puberty, as we transmitted from ʿAbd Allah ibn Rabiʿ, from Muhammed ibn Ishaq, from Ibn al-Aʿrabi, from Abu Dawud: Muhammed ibn Kathir related to us: Sufyan related to us: ʿAbd al-Malik ibn ʿUmayr related to us: ʿAtiyyah al-Qurazi related to us, saying: "I was among those taken captive from Qurayzah. They would inspect us: whoever had grown hair was killed, and whoever had not grown it was not killed. I was among those who had not grown it." Abu Muhammed said: It is impossible and inconceivable that people should be killed in the presence of the Prophet ﷺ while he did not know whether it was rightfully or wrongfully done. No Muslim would ever think such a thing. Those of Qurayzah who were killed were killed in the presence of the Prophet ﷺ and at his command. He said to Saʿd ibn Muʿadh: "You have judged concerning them according to the judgment of the King," as ʿAbd Allah ibn Rabiʿ related to us, from Muhammed ibn Muʿawiyah, from Ahmad ibn Shuʿayb, from Mahmud ibn Ghaylan: Wakiʿ related to us: Sufyan al-Thawri related to us, from ʿAbd al-Malik ibn ʿUmayr, who said: I heard ʿAtiyyah al-Qurazi saying: "We were presented before the

والإنبات بلوغ صحيح، كما روينا عن عبد الله بن ربيع، عن محمد بن إسحاق، عن ابن الأعرابي، عن أبي داود، ثنا محمد بن كثير، ثنا سفيان، ثنا عبد الملك بن عمير، ثنا عطية القرظي قال: كنت فيمن سبي من قريظة فكانوا ينظرون، فمن أنبت الشعر قتل، ومن لم ينبت لم يقتل، فكنت فيمن لم ينبت. قال أبو محمد: ومن المحال الممتنع أن تقتل الناس بحضرة النبي صلى الله عليه وسلم وهو لا يعلم أبحق أم بباطل هذا ما لا يظنه مسلم البتة وقتلى قريظة قتلوا بحضرة النبي صلى الله عليه وسلم وبأمره وقال لسعد بن معاذ حكمت فيهم بحكم الملك كما حدثنا عبد الله بن ربيع، عن محمد بن معاوية، عن أحمد بن شعيب، عن محمود بن غيلان، ثنا وكيع، ثنا سفيان الثوري، عن عبد الملك بن عمير قال سمعت عطية القرظي يقول عرضنا على النبي صلى الله عليه وسلم يوم قريظة فكان من أنبت قتل ومن لم ينبت خلي سبيله، فكنت فيمن لم ينبت فخلي سبيلي. قال أبو محمد: فمن لم ينبت ولا احتلم من رجل أو امرأة أو لم تحض المرأة، فإذا تجاوزا تسعة عشر عاما قمرية بساعة فقط، لزمهم حكم البلوغ، لأنه إجماع، وأما من جعل إكمال خمسة عشر عاما بلوغا، وإن لم يكن هناك حيض ولا احتلام ولا إنبات فقول لا دليل عليه. وأما حجتهم بحديث ابن عمر عرضت على رسول الله صلى الله عليه وسلم يوم أحد وأنا ابن أربعة عشر عاما فردني ثم عرضت عليه يوم الخندق وأنا ابن خمسة عشر عاما فأجازني فلا حجة لهم في ذلك لأن النبي صلى الله عليه وسلم لم يقل إني أجزته لسنه وكان عام الخندق بالمدينة لا خروج عليهم فيه، فالله أعلم لماذا أجازه، إما لأنهم لم يسافروا عن موضعهم، أو لأنه قد بلغ، فلا حجة في ذلك أصلا وبالله تعالى التوفيق. ولا نهى عليه السلام عن غزو الأشداء من الصبيان، فتكون إجازته دليلا على أنه قد كان بلغ. ومما يدل على أن الشرائع لا تلزم إلا من عرفها ما صح عن النبي صلى الله عليه وسلم من أنه لم يزجر عدي بن حاتم عما تأوله في العاقلين،

Prophet ﷺ on the day of Qurayzah. Whoever had grown pubic hair was killed, and whoever had not grown it was released. I was among those who had not grown it, so I was released." Abu Muhammed said: If a male or female has neither grown pubic hair nor experienced a nocturnal emission, or the woman has not menstruated, then once they have exceeded nineteen lunar years by just one hour, the legal status of puberty becomes binding upon them, because this is a matter of consensus. As for whoever makes completion of fifteen years an attainment of puberty even where there has been no menstruation, nocturnal emission, or growth of pubic hair, that is a position for which there is no proof. As for their adducing the hadith of Ibn ʿUmar as evidence—"I was presented before the Messenger of Allah ﷺ on the day of Uhud when I was fourteen years old, and he turned me back. Then I was presented before him on the day of the Trench when I was fifteen years old, and he permitted me"—they have no evidence in this. The Prophet ﷺ did not say, "I permitted him because of his age." In the year of the Trench they were in Medina, with no going out required of them. Allah knows best why he permitted him: either because they did not travel away from their location, or because he had attained puberty. There is therefore no evidence in this at all. Success comes through Allah Most High. Nor did he, peace be upon him, prohibit strong boys from taking part in military expeditions, such that his permission would be evidence that he had already attained puberty. Among the things indicating that the prescriptions of the Law bind only those who know them is what is authentically established concerning the Prophet ﷺ: he did not rebuke ʿAdi ibn Hatim for the interpretation he adopted concerning the two rational beings, but taught him instead. Blame was lifted from ʿAdi because he had interpreted in ignorance. Nor did he ﷺ command Muʿawiyah ibn al-Hakam to repeat the prayer when he deliberately spoke during it. He ﷺ repeatedly commanded the man who had not completed his prayer with stillness in its bowing and prostration to repeat it. Then, when the man informed him that he knew no more, he taught him. The transmitter did not mention that he commanded him to repeat it, except that his ﷺ command to perform what he had taught him was a command to him to perform it. Likewise, there is the explicit report of the people of Qubaʾ praying toward Jerusalem when that had already been abrogated. Nor

لكن علمه وسقط اللوم عن عدي لأنه تأول جاهلا وأنه صلى الله عليه وسلم لم يأمر معاوية بن الحكم بإعادة الصلاة إذ تكلم فيها عامدا وأنه صلى الله عليه وسلم أمر الذي لم يتم صلاته مطمئنا في ركوعه وسجوده بالإعادة مرارا. فلما أعلمه أنه لا يدري أكثر، علمه. ولم يذكر الراوي أنه أمره بإعادة إلا أن أمره صلى الله عليه وسلم بأن يعمل ما علمه أمر له بعمله وكذلك ما نص من صلاة أهل قباء إلى بيت المقدس وقد كان نسخ ذلك وأنه صلى الله عليه وسلم لم يقد من أسامة إذ قتل الرجل بعد قوله لا إله إلا الله وأعلمه صلى الله عليه وسلم أنه قد فعل في ذلك ما لا يحل وكذلك لم يقد صلى الله عليه وسلم بني جذيمة ممن قتلهم مع خالد بن الوليد فهذا يبطل قول من أوجب إعادة صلاة، أو إقامة حد، أو قضاء صوم على جاهل متأول. وبذلك قضى عمر وعثمان إذ درء الحد عن السوداء المعترفة بالزنى، لجهلها بتحريمه وهذا بين وبالله تعالى التوفيق

did he ﷺ exact retaliation from Usamah when he killed the man after the latter had said, “There is no god but Allah”; he ﷺ informed him that in doing so he had done something unlawful. Likewise, he did not exact retaliation —may Allah bless him and grant him peace ﷺ—on behalf of Banu Jadhimah from those who killed them alongside Khalid ibn al-Walid. This invalidates the position of anyone who requires the repetition of a prayer, the application of a prescribed punishment, or the making up of a fast from an ignorant person acting on an interpretation. ʿUmar and ʿUthman ruled accordingly when they averted the prescribed punishment from the black woman who confessed to unlawful sexual intercourse, because she did not know that it was prohibited. This is clear, and success comes through Allah Most High.[25][26][27][28][29]

[25] **Translator’s note (L2147):** The source shifts from singular “for him” to plural “they will be commanded” in the account of the fire; this shift is preserved. The name «الجلاح» is rendered “al-Jallah” as supplied. Its identification and intended vocalization are uncertain; no other name has been substituted.

[26] **Translator’s note (L2151):** The unvocalized الملك is rendered “the King”; it can also be read “the angel.”

[27] **Translator’s note (L2153):** The source reads العاقلين, literally “the two rational beings,” in the account of ʿAdi ibn Hatim. This appears to be a transcription error for العقالين, “the two tethering cords”; the supplied reading has been retained. The phrase لا خروج عليهم فيه is compressed and somewhat awkward. It is rendered as indicating that they were not required to march out from Medina.

[28] **Translator’s note (L2155):** The source uses a singular verb, درء, “he averted,” after naming both ʿUmar and ʿUthman. The English preserves both named authorities while expressing the apparent sense.

[29] **Qur’an references (L2146):** Qur’an 17:15 (Al-Isra); Qur’an 16:125 (An-Nahl); Qur’an 9:122 (At-Tawbah).

الباب 31: التفقه في الدين وصفة المفتي

Chapter 31: Religious Learning and the Qualifications of the Mufti

Ibn Ḥazm · Arabic–English parallel edition

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[الباب الحادي والثلاثون في صفة التفقه في الدين وما يلزم كل امرىء طلبه من دينه، وصفة المفتيالذي لم يفت في الدين، وصفة الاجتهاد الواجب على أهل الإسلام]

قال أبو محمد قال الله تعالى {وما كان لمؤمنون لينفروا كآفة فلولا نفر من كل فرقة منهم طآئفة ليتفقهوا في لدين ولينذروا قومهم إذا رجعوا إليهم لعلهم يحذرون} فبين الله عز وجل في هذه الآية وجه التفقه كله، وأنه ينقسم قسمين: أحدهما: يخص المرء في نفسه وذلك مبين في قوله تعالى {وما كان لمؤمنون لينفروا كآفة فلولا نفر من كل فرقة منهم طآئفة ليتفقهوا في لدين ولينذروا قومهم إذا رجعوا إليهم لعلهم يحذرون} فهذا معناه تعليم أهل العلم لمن جهل حكم ما يلزمه. والثاني: تفقه من أراد وجه الله تعالى، بأن يكون منذرا لقومه وطبقته قال تعالى: {ومآ أرسلنا من قبلك إلا رجالا نوحي إليهم فسألوا أهل لذكر إن كنتم لا تعلمون} ففرض على كل أحد طلب ما يلزمه، على حسب ما يقدر عليه من الاجتهاد لنفسه في تعرف ما ألزمه الله تعالى إياه، وقد بينا أن الاجتهاد هو افتعال من الجهد، فهو في الدين إجهاد المرء نفسه في طلب ما تعبده الله تعالى به في القرآن وفيما صح عن النبي صلى الله عليه وسلم لأنه لا دين غيرهما فأقلهم في ذلك درجة من هو في غمار العامة، ومن حدث عهده بالجلب من بلاد الكفر وأسلم من الرجال والنساء. وقد ذكرنا كيف يطلب هؤلاء علم ما يلزمهم من شرائع الإسلام، في باب إبطال التقليد من كتابنا هذا، فأغنى عن ترداده، ونذكر منه ههنا ما لا بد من ذكره، وهو أن كل مسلم عاقل بالغ من ذكر أو أنثى، حر أو عبد، يلزمه الطهارة والصلاة والصيام فرضا بلا خلاف من أحد من المسلمين، وتلزم الطهارة والصلاة المرضى والأصحاء، ففرض على كل من ذكرنا أن يعرف فرائض صلاته وصيامه وطهارته وكيف يؤدي كل ذلك. وكذلك يلزم كل من ذكرنا أن

[Chapter Thirty-One: On the Nature of Acquiring Understanding of Religion, What Each Person Must Seek to Learn of His Religion, the Qualifications of the Mufti Who Has Not Issued a Legal Opinion in Religion, and the Nature of the Independent Exertion Required of the People of Islam][1]

L2156

L2157–2162 Abu Muhammed said: Allah Most High said: {The believers were not to go forth all together. Why, then, did a group from each division of them not go forth, so that they might acquire understanding of religion and warn their people when they returned to them, that they might beware?} In this verse Allah, Mighty and Majestic, explained the whole manner of acquiring understanding, and that it falls into two divisions. One concerns a person individually. This is explained in His words, Most High: {The believers were not to go forth all together. Why, then, did a group from each division of them not go forth, so that they might acquire understanding of religion and warn their people when they returned to them, that they might beware?} Its meaning is that those possessing knowledge are to teach anyone ignorant of the ruling governing what is binding upon him. The second is the acquisition of understanding by someone who seeks the countenance of Allah Most High by becoming a warner to his people and those of his own rank. He, Most High, said: {We sent before you only men to whom We revealed; so ask the people of the Reminder if you do not know.} Thus He made it obligatory for everyone to seek what is binding upon him, according to the independent exertion of which he is capable on his own behalf, in ascertaining what Allah Most High has obligated him to do. We have already explained that "independent exertion" (ijtihad) is a verbal noun of the ifti'al pattern derived from "effort" (juhd). In religion it means a person's exerting himself to seek what Allah Most High has required of him as worship in the Quran and in what is authentically established from the Prophet ﷺ, for there is no religion apart from these two. Those of the lowest degree in this respect are

[1] **Translator's note (L2156):** The heading reads المفتيالذي لم يفت, with the first two words run together: "the mufti who has not issued a legal opinion." This is an awkward and possibly corrupt reading, retained without correction.

people among the mass of ordinary folk, and men and women who have recently been brought from the lands of unbelief and have embraced Islam. We have already explained how these people are to seek knowledge of the prescriptions of Islam binding upon them in the chapter invalidating uncritical imitation in this book of ours, which makes repetition unnecessary. Here we shall mention what must be mentioned of it, namely, that every sane Muslim who has attained puberty, male or female, free or enslaved, is bound by ritual purification, prayer, and fasting as obligations, without disagreement from any Muslim. Ritual purification and prayer bind the sick and the healthy alike. It is therefore obligatory for everyone we have mentioned to know the obligatory requirements of his prayer, fasting, and ritual purification, and how to perform all of these. Likewise, everyone whom we have mentioned is bound to know what is lawful and unlawful for him concerning foods, drinks, clothing, sexual relations, the shedding of blood, speech, and deeds. Ignorance of all this is permissible for none of people, male and female, their free persons, their male slaves, and their female slaves. They are obliged to begin learning this from the time they attain puberty, if they are Muslims, or from the time they embrace Islam after attaining puberty. The imam must compel women's husbands and slaves' masters to teach them what we have mentioned, either themselves or by permitting them to meet someone who will teach them. The imam is obliged to require people to do this and to appoint persons regularly to teach the ignorant. Then every possessor of wealth is obliged to learn the ruling concerning the obligatory alms incumbent upon him; men and women, slaves and free persons, are alike in this. Whoever possesses no wealth whatsoever is not obliged to learn the rulings on obligatory alms. Then whoever becomes subject to the obligation of pilgrimage is obliged to learn the rites of pilgrimage and the lesser pilgrimage. This is not incumbent upon someone who lacks bodily health and possesses no wealth. Then commanders of armies are obliged to know the rules governing military conduct, the rulings on jihad, and the division of spoils and revenues acquired without fighting. Then governors and judges are obliged to learn legal rulings, judicial decisions, and prescribed punishments; learning these is not obligatory for others. Then merchants and everyone who sells his produce are obliged to learn the rulings on sales, and which sales

يعرف ما يحل له ويحرم، من المآكل والمشارب والملابس والفروج والدماء والأقوال والأعمال، فهذا كله لا يسع جهله أحدا من الناس، ذكورهم وإناثهم، أحرارهم وعبيدهم وإمائهم، وفرض عليهم أن يأخذوا في تعلم ذلك من حين يبلغون الحلم وهم مسلمون، أو من حين يسلمون بعد بلوغهم الحلم، ويجبر الإمام أزواج النساء وسادات الأرقاء على تعليمهم ما ذكرنا، إما بأنفسهم، وإما بالإباحة لهم لقاء من يعلمهم، وفرض على الإمام أن يأخذ الناس بذلك، وأن يراتب أقواما لتعليم الجهال. ثم فرض على كل ذي مال تعلم حكم ما يلزمه من الزكاة، وسواء الرجال والنساء والعبيد والأحرار، فمن لم يكن له مال أصلا فليس تعلم أحكام الزكاة عليه فرضا. ثم من لزمه فرض الحج، ففرض عليه تعلم أعمال الحج والعمرة. ولا يلزم ذلك من لا صحة لجسمه ولا مال له، ثم فرض على قواد العساكر معرفة السير وأحكام الجهاد، وقسم الغنائم والفيء، ثم فرض على الأمراء والقضاة تعلم الأحكام والأقضية والحدود، وليس تعلم ذلك فرضا على غيرهم، ثم فرض على التجار وكل من يبيع غلته تعلم أحكام البيوع، وما يحل منها وما يحرم، وليس ذلك فرضا على من لا يبيع ولا يشتري ثم فرض على كل جماعة مجتمعة في قرية أو مدينة أو دسكرة وهي المجشرة عندنا أو حلة أعراب أو حصن أن ينتدب منهم لطلب جميع أحكام الديانة أولها عن آخرها، ولتعلم القرآن كله ولكتاب كل ما صح عن النبي صلى الله عليه وسلم من أحاديث الأحكام أولها عن آخرها وضبطها بنصوص ألفاظها، وضبط كل ما أجمع المسلمون عليه ما اختلفوا فيه من يقوم بتعليمهم وتفقيههم من القرآن والحديث والإجماع. يكتفي بذلك على قدر قلتهم أو كثرتهم بالآية التي تلونا في أول هذا الكتاب، بحسب ما يقدر أن يعمهم بالتعليم، ولا يشق على المستفتي قصده، فإذا انتدب لذلك من يقوم بما ذكرنا فقط سقط عن باقيهم إلا ما يلزمه خاصة نفسه فقط على ما ذكرنا آنفا، ولا يحل للمفقه أن يقتصر على

are lawful and which unlawful. This is not obligatory for someone who neither sells nor buys. Then every community gathered in a village, a city, a rural settlement—which we call a majsharah—a Bedouin encampment, or a fortress is obliged to have persons from among them volunteer to seek all the rulings of the religion, from first to last; to learn the entire Quran; to write down all the hadiths concerning legal rulings authentically transmitted from the Prophet ﷺ, from first to last, and accurately preserve their precise wording; and to accurately preserve everything upon which Muslims have reached consensus and the matters over which they have disagreed: persons who will undertake to teach them and give them understanding of the law from the Quran, hadith, and consensus, in sufficient numbers according to whether the community is small or large, in accordance with the verse we recited at the beginning of this book, so that they can provide instruction to everyone and reaching them does not impose hardship upon someone seeking a legal opinion. When persons volunteer who can undertake what we have mentioned, that obligation alone falls away from the rest, except for what is incumbent upon each personally, as we mentioned just now. It is not lawful for the instructor in jurisprudence to confine himself to men's opinions instead of what we have mentioned. If they cannot find in their locality someone who will give them understanding of all this, as we have mentioned, they are obliged to travel to wherever they can find scholars versed in the various branches of knowledge, however distant their dwellings may be, even if they are in China, because of His saying, exalted is He: "The believers are not to go forth all together. Why, then, does a group from every division of them not go forth, so that they may acquire understanding of the religion

آراء الرجال دون ما ذكرنا. فإن لم يجدوا في محلتهم من يفقههم في ذلك كله كما ذكرنا ففرض عليهم الرحيل إلى حيث يجدون العلماء المحتوين على صنوف العلم، وإن بعدت ديارهم ولو أنهم بالصين لقوله تعالى {وما كان لمؤمنون لينفروا كآفة فلولا نفر من كل فرقة منهم طآئفة ليتفقهوا في لدين ولينذروا قومهم إذا رجعوا إليهم لعلهم يحذرون} والنفار والرجوع لا يكون إلا برحيل.

and warn their people when they return to them, so that they may beware?" Going forth and returning can only occur through travel.[2][3][4][5]

L2163–2168 As for someone who finds in his locality a person who will give him understanding of the various branches of knowledge, as we have mentioned, the community unanimously agrees that no travel is incumbent upon him for this beyond going to the jurist's mosque or home, just as the Companions used to do with the Prophet ﷺ. The same applies to memorizing the entire Quran and teaching it. Every Muslim is obliged to memorize the Mother of the Quran and some further portion of the Quran. All Muslims are obliged to ensure that in every village, city, or fortress there is someone who has memorized the entire Quran, teaches it to people, and instructs them in its recitation, because of the Messenger of Allah's ﷺ command to recite it. Everything we have mentioned thus establishes that the going forth in question is obligatory upon the entire community until some of them undertake it, whereupon it falls away from the rest. As for someone who says that it is not obligatory upon the community, but is obligatory upon some of them without specifying their identities, it suffices to invalidate his statement that he construes Allah's address, exalted is He, as applying to no one. For if He, exalted is He, has neither specified whom He addresses nor addressed everyone, He has addressed no one—exalted and majestic is He above that!

ومن وجد في محلته من يفقهه في صنوف العلم كما ذكرنا فالأمة مجمعة على أنه لا يلزمه رحيل في ذلك، إلا القصد إلى مسجد الفقيه أو منزله فقط كما كان الصحابة يفعلون مع النبي صلى الله عليه وسلم وهكذا القول في حفظ القرآن كله وتعليمه ففرض على كل مسلم حفظ أم القرآن وقرآن ما، وفرض على جميع المسلمين أن يكون في كل قرية أو مدينة أو حصن من يحفظ القرآن كله ويعلمه الناس ويقرئه إياهم لأمر رسول الله صلى الله عليه وسلم بقراءاته فصح بكل ما ذكرنا أن النفار المذكور فرض على الجماعة كلها حتى يقوم بها بعضهم فيسقط عن الباقين. وأما من قال: إنه ليس فرضا على الجماعة، لكنه فرض على بعضهم بغير أعيانهم، فنكتفي من إبطال قوله بأنه يحمل خطاب الله تعالى واقعا على لا أحد، لأنه إذا لم يعين تعالى من يخاطب، ولا خاطب الجميع، فلم يخاطب أحدا عز وجل عن ذلك، وفي هذا سقوط الفرض عن كل من لم يخاطب، فهو ساقط على كل أحد، إذ كل أحد لم يخاطب، وفي هذا بطلان الدين، وبالله تعالى التوفيق. فالناس في ذلك على مراتب، فمن ارتفع فهمه عن فهمهم أغتام المجلوبين من بلاد العجم منذ قريب، وعن فهم أغتام العامة، فإنه لا يجزيه في ذلك ما يجزي من ذكرنا، لكن يجتهد هذا على حسب ما يطيق في البحث عما نابه من نص الكتاب والسنة ودلائلهما، ومن الإجماع ودلائله؛ ويلزم هذا إذا سأل الفقيه فأفتاه أن يقول له: من أين قلت هذا؟ فيتعلم من ذلك مقدار ما انتهت إليه طاقته وبلغه فهمه. وأما المنتصبون لطلب الفقه، وهم النافرون للتفقه، الحاملون لفرض النفار عن جماعتهم، المتأهبون لنذارة قومهم، ولتعلم المتعلم، وفتيا المستفتي، وربما للحكم بين الناس، ففرض عليهم تقصي علوم الديانة على حسب طاقتهم ومن أحكام القرآن وحديث النبي صلى الله عليه وسلم ورتب النقل وصفات النقلة ومعرفة السند

[2] **Translator's note (L2157):** The first Quranic quotation is repeated in full in the source and is retained. In both occurrences the transcription has لمؤمنون and لدين where the standard Quranic wording has المؤمنون and الدين; the translation follows their evident lexical sense. The second Quranic quotation has لذكر where the standard wording has الذكر; the translation follows the evident sense, "the Reminder."

[3] **Translator's note (L2160):** The supplied wording places 'the matters over which they have disagreed' immediately after 'everything upon which Muslims have reached consensus,' without a conjunction. The translation supplies the apparent coordination and flags the irregularity here. The author identifies the rural settlement termed daskarah with the local term majsharah; the latter is retained because its precise regional sense is uncertain.

[4] **Translator's note (L2162):** The Quran quotation, corresponding to 9:122, contains defective spellings in 'the believers' and 'the religion.' These do not yield a distinct intelligible meaning in English.

[5] **Qur'an references (L2157):** Qur'an 9:122 (At-Tawbah); Qur'an 12:109 (Yusuf); Qur'an 16:43 (An-Nahl).

This entails that the obligation falls away from everyone who has not been addressed; it therefore falls away from every individual, since every individual has not been addressed. This entails the nullification of the religion. Through Allah, exalted is He, comes success. People occupy different levels in this respect. Anyone whose understanding rises above the understanding of the inarticulate persons recently brought from non-Arab lands, and above the understanding of the inarticulate among the common people, cannot discharge his obligation in this matter through what suffices for those whom we have mentioned. Rather, he must exert himself to the extent of his ability in investigating whatever matter confronts him through the text of the Book and the Sunnah and their indications, and through consensus and its indications. When he asks a jurist and the jurist gives him a legal opinion, he is obliged to say to him, "On what basis do you say this?" He thereby learns as much as his capacity permits and his understanding can encompass. As for those who devote themselves to seeking jurisprudence—those who go forth to acquire understanding, who bear on behalf of their community the obligation of going forth, and who prepare themselves to warn their people, for the learner's learning, to give legal opinions to those seeking them, and perhaps to judge between people—they are obliged to investigate the religious sciences exhaustively, to the extent of their ability: the rulings of the Quran, the hadith of the Prophet ﷺ, the ranks of transmission, the characteristics of transmitters, and how to distinguish a sound chain of transmission from others, such as a weak report with an omitted intermediary. This is his binding obligation. If he adds to this knowledge of consensus and disagreement, the basis upon which each proponent states his position, and how to refer the statements of those who differ and dispute back to the Book and the Sunnah, that is good. He is obliged to learn the manner of demonstrations by which truth is distinguished from falsehood, and how to proceed with texts that appear to conflict. All this is expressly stated in the Quran. He said, exalted is He: "The believers are not to go forth all together. Why, then, does a group from every division of them not go forth, so that they may acquire understanding of the religion and warn their people when they return to them, so that they may beware?" This imposes the obligation to learn the rulings of the Quran and the rulings of the Prophet's ﷺ commands, because these two

الصحيح مما عداه من مرسل ضعيف، هذا فرضه اللازم له، فإن زاد إلى ذلك معرفة الإجماع والاختلاف، ومن أين قال كل قائل، وكيف يرد أقاويل المختلفين المتنازعين إلى الكتاب والسنة، فحسن، وفرض عليه تعلم كيفية البراهين التي يتميز بها الحق من الباطل، وكيف يعمل فيما ظاهره التعارض من النصوص، وكل هذا منصوص في القرآن قال تعالى {وما كان لمؤمنون لينفروا كآفة فلولا نفر من كل فرقة منهم طآئفة ليتفقهوا في لدين ولينذروا قومهم إذا رجعوا إليهم لعلهم يحذرون} فهذا إيجاب لتعلم أحكام القرآن وأحكام أوامر النبي صلى الله عليه وسلم لأن هذين أصل الدين وقال تعالى {يأيها لذين آمنوا إن جآءكم فاسق بنبإ فتبينوا أن تصيبوا قوما بجهالة فتصبحوا على ما فعلتم نادمين} فوجب بذلك تعرف عدول النقلة من فساقهم، وفقهائهم ممن لم يتفقه منهم. وأما معرفة الإجماع والاختلاف فقد زعم أن هذا يجب بقوله تعالى {يا أيها لذين آمنوا أطيعوا لله وأطيعوا لرسول وأولي لأمر منكم فإن تنازعتم في شيء فردوه إلى لله ولرسول إن كنتم تؤمنون بلله وليوم لآخر ذلك خير وأحسن تأويلا} قال ففرض علينا معرفة ما اتفق عليه أولو الأمر منا، لأننا مأمورون بطاعتهم، ولا يمكننا طاعتهم إلا بعد معرفة إجماعهم الذي يلزمنا طاعتهم فيه. وأما معرفة الاختلاف، ومعرفة ما يتنازعون فيه، ومعرفة كيفية الرد إلى الكتاب والسنة فبقوله تعالى {يا أيها لذين آمنوا أطيعوا لله وأطيعوا لرسول وأولي لأمر منكم فإن تنازعتم في شيء فردوه إلى لله ولرسول إن كنتم تؤمنون بلله وليوم لآخر ذلك خير وأحسن تأويلا} ففرض علينا معرفة ما يتنازعون فيه، ومعرفة كيف يرد ذلك إلى الكتاب والسنة، لأننا إن لم نعرف الاختلاف ظننا أن القول الذي نسمعه من بعض العلماء لا خلاف فيه، فنتبعه دون أن نعرضه على القرآن والسنة، فنخطىء ونعصي الله تعالى، إذ أخذنا قولا نهينا عن اتباعه. قال أبو محمد: وهذا خطأ، لأننا إنما أمرنا تعالى بطاعة أولي الأمر فيما نقلوه إلينا عن رسول الله صلى الله عليه وسلم فأما أن يقولوا من عند أنفسهم بحكم لا

are the foundation of the religion. He also said, exalted is He: "O you who believe, if a morally corrupt person brings you news, ascertain the matter, lest you afflict people in ignorance and then become remorseful for what you have done." This makes it obligatory to distinguish upright transmitters from morally corrupt ones, and their jurists from those among them who have not acquired understanding of the law. As for knowledge of consensus and disagreement, someone has claimed that this is obligatory because of His saying, exalted is He: "O you who believe, obey Allah, obey the Messenger, and those vested with authority among you. If you dispute over anything, refer it back to Allah and the Messenger, if you believe in Allah and the Last Day. That is better and finer in outcome." He said: "We are therefore obliged to know what those vested with authority among us have agreed upon, because we are commanded to obey them, and we cannot obey them until we know their consensus concerning that in which we are bound to obey them. As for knowing disagreement, knowing what they dispute over, and knowing how to refer matters back to the Book and the Sunnah, this follows from His saying, exalted is He: 'O you who believe, obey Allah, obey the Messenger, and those vested with authority among you. If you dispute over anything, refer it back to Allah and the Messenger, if you believe in Allah and the Last Day. That is better and finer in outcome.' We are therefore obliged to know what they dispute over and to know how that is referred back to the Book and the Sunnah. For if we do not know disagreement, we will suppose that the statement we hear from one of the scholars is undisputed, and will follow it without submitting it to the Quran and the Sunnah. We will thereby err and disobey Allah, exalted is He, because we have adopted a statement that we were forbidden to follow." Abu Muhammed said: This is mistaken, because He, exalted is He, commanded us to obey those vested with authority only concerning what they have transmitted to us from the Messenger of Allah ﷺ. As for their pronouncing, on their own authority, a ruling for which there is no text, it has never been permissible for anyone to do this, nor has it ever been lawful for anyone to obey someone who does so. Allah, exalted is He, has threatened His Messenger ﷺ with the sternest threat over this; how much more, then, someone below him! He said, exalted is He: "Had he fabricated some sayings against Us, We would have seized

نص فيه فما جاز هذا قط لأحد أن يفعله، ولا حل لأحد قط أن يطيع من فعله وقد توعد الله تعالى ورسوله صلى الله عليه وسلم على هذا أشد الوعيد فكيف على من دونه قال تعالى {ولو تقول علينا بعض لأقاويل * لأخذنا منه باليمين * ثم لقطعنا منه لوتين * فما منكم من أحد عنه حاجزين} فصح أن من قال في الدين بقول أضافه إلى الله تعالى فقد كذب، وتقول على الله تعالى الأقاويل.

him by the right hand; then We would have severed his aorta; and none of you could have shielded him." It is thus established that anyone who makes a statement concerning religion and attributes it to Allah, exalted is He, has lied and fabricated sayings against Allah, exalted is He,[6][7][8][9][10]

L2169–2176 and that whatever one does not attribute to Allah Most High is no part of religion at all. Knowledge of disagreement, however, is additional knowledge. Saʿid ibn Jubayr said, "The most knowledgeable of people is the one most knowledgeable about disagreement." Saʿid spoke truly, because this is additional knowledge; so too is knowing the basis on which each person advanced his position. As for knowing how to establish a demonstration, this follows from His saying, Most High: "They say, 'None will enter Paradise unless he is a Jew or a Christian.' Those are their wishes. Say: 'Produce your demonstration, if you are truthful.'" We have therefore said nothing except what our Lord, Mighty and Majestic, has said and made obligatory

وأن من لم يضفه إلى الله تعالى، فليس من الدين أصلا، لكن معرفة الاختلاف علم زائد، قال سعيد بن جبير: أعلم الناس أعلمهم بالاختلاف، وصدق سعيد، لأنه علم زائد، وكذلك معرفة من أين قال كل قائل، فأما معرفة كيفية إقامة البرهان فبقوله تعالى {وقالوا لن يدخل لجنة إلا من كان هودا أو نصارى تلك أمانيهم قل هاتوا برهانكم إن كنتم صادقين} فلم نقل شيئا إلا ما قاله ربنا عز وجل وأوجبه علينا، والحمد لله رب العالمين. وإنما نحن منبهون على ما أمرنا الله تعالى، وموقفون على مواضع الأوامر التي مر عليها من يمر غافلا أو معرضا، ومنذرون قومنا فيما تفقهنا فيه، ونفرنا لتعلمه بمن الله عز وجل علينا كما أمرنا تعالى إذ يقول {وما كان لمؤمنون لينفروا كآفة فلولا نفر من كل فرقة منهم طآئفة ليتفقهوا في لدين ولينذروا قومهم إذا رجعوا إليهم لعلهم يحذرون} ولا نقول من عند أنفسنا شيئا ونعوذ بالله من ذلك، ولم يبح الله تعالى ذلك لأحد لا قديما ولا حديثا، وبالله تعالى نتأيد، وقال تعالى: {ما ننسخ من آية أو ننسها نأت بخير منها أو مثلها ألم تعلم أن لله على كل شيء قدير} ففرض علينا معرفة الناسخ من المنسوخ، وفرض على من قصد التفقه في الدين، كما ذكرنا أن يستعين على ذلك من سائر العلوم بما تقتضيه حاجته إليه في فهم كلام ربه تعالى وكلام نبيه صلى الله عليه وسلم قال تعالى {ومآ أرسلنا من رسول إلا بلسان قومه ليبين لهم فيضل لله من يشآء ويهدي من يشآء وهو لعزيز لحكيم} ففرض على الفقيه أن يكون عالما بلسان العرب ليفهم عن الله عز وجل وعن النبي صلى الله عليه وسلم ويكون عالما بالنحو الذي هو ترتيب العرب لكلامهم الذي به نزل القرآن، وبه يفهم

[6] **Translator's note (L2163):** 'The Mother of the Quran' designates the opening chapter, al-Fatihah. The supplied phrase corresponding to 'above the understanding of the inarticulate persons' contains an extra or corrupt pronoun in fahmihim. The translation follows the apparent syntactic intention. 'Inarticulate' renders aghtam, a disparaging term that can denote difficulty speaking intelligibly, especially in Arabic, and can also suggest dullness.

[7] **Translator's note (L2164):** The source reads 'for the learner's learning' rather than the more expected 'to teach the learner'; the translation preserves that wording. Mursal denotes a report with an omitted intermediary in its transmission. The supplied phrase mursal da'if may describe a weak mursal report or elliptically enumerate mursal and weak reports; the translation follows the former construction.

[8] **Translator's note (L2166):** The Quran quotations correspond to 9:122, 49:6, and 4:59, with 4:59 quoted twice. The supplied transcription has defective spellings and a duplicated letter in the verb translated 'afflict'; these do not produce distinct intelligible meanings. The source introduces an unnamed person's argument with 'someone has claimed' and then 'he said.' The argument continues into the next unit until Abu Muhammed's response.

[9] **Translator's note (L2168):** The unvocalized wording permits 'His Messenger' to be read either as the object of Allah's threat or as a second subject alongside Allah. The translation takes it as the object, as indicated by the following comparison with someone below the Messenger and the quotation. The Quran quotation corresponds to 69:44–47 and contains defective spellings of several definite articles. The final clause of the author's argument continues in the following segment.

[10] **Qur'an references (L2163):** Qur'an 9:122 (At-Tawbah); Qur'an 49:6 (Al-Hujurat); Qur'an 4:59 (An-Nisa); Qur'an 69:47 (Al-Haqqah).

upon us. Praise belongs to Allah, Lord of the worlds. We merely draw attention to what Allah Most High has commanded us, point out the locations of commands over which some pass heedlessly or turn away, and warn our people concerning that in which we have acquired understanding and which we have gone forth to learn, through Allah's favor upon us, Mighty and Majestic, as He Most High commanded us when He said: "The believers should not go forth all together. Why, then, should a group from every division of them not go forth, so that they may acquire understanding of religion and warn their people when they return to them, so that they may beware?" We say nothing of our own devising, and we seek refuge in Allah from that. Allah Most High has permitted this to no one, in earlier or later times. From Allah Most High we derive support. He Most High said: "Whatever verse We abrogate or cause to be forgotten, We bring one better than it or its like. Do you not know that Allah has power over all things?" He thus made it obligatory upon us to distinguish the abrogating from the abrogated, and made it obligatory upon anyone seeking to acquire understanding of religion, as we have mentioned, to draw upon the other sciences for whatever assistance he needs in understanding the speech of his Lord Most High and the speech of his Prophet ﷺ. He Most High said: "We have sent no messenger except in the language of his people, so that he might make things clear to them. Then Allah leads astray whomever He wills and guides whomever He wills, and He is the Mighty, the Wise." It is therefore obligatory for the jurist to know the language of the Arabs, so that he may understand what Allah, Mighty and Majestic, and the Prophet ﷺ communicate, and to know grammar, which is the Arabs' arrangement of their speech: the language in which the Qur'an was revealed and through which one understands the meanings of speech expressed by differences in vowel markings and the formation of words. Whoever is ignorant of vocabulary—that is, the expressions applied to the things named—and ignorant of grammar—that is, knowledge of the differences in vowel markings that occur because of differences in meaning—does not know the language in which Allah Most High and our Prophet, may Allah bless him and grant him peace, addressed us. Anyone who does not know that language is not permitted to issue legal opinions concerning it, because he would be issuing opinions about what he does not know. Allah

معاني الكلام التي يعبر عنها باختلاف الحركات، وبناء الألفاظ، فمن جهل اللغة وهي الألفاظ الواقعة على المسميات، وجهل النحو الذي هو علم اختلاف الحركات الواقعة لاختلاف المعاني، فلم يعرف اللسان الذي به خاطبنا الله تعالى ونبينا صلى الله عليه وسلم ومن لم يعرف ذلك اللسان لم يحل له الفتيا فيه، لأنه يفتي بما لا يدري، وقد نهاه الله تعالى عن ذلك بقوله تعالى {ولا تقف ما ليس لك به علم إن لسمع ولبصر ولفؤاد كل أولئك كان عنه مسؤولا} وبقوله تعالى {ومن لناس من يجادل في لله بغير علم ويتبع كل شيطان مريد} وبقوله تعالى: {هأنتم هؤلاء حاججتم فيما لكم به علم فلم تحآجون فيما ليس لكم به علم ولله يعلم وأنتم لا تعلمون} وبقوله تعالى {هأنتم هؤلاء حاججتم فيما لكم به علم فلم تحآجون فيما ليس لكم به علم ولله يعلم وأنتم لا تعلمون} وقال تعالى {إذ تلقونه بألسنتكم وتقولون بأفواهكم ما ليس لكم به علم وتحسبونه هينا وهو عند لله عظيم} وفرض على الفقيه أن يكون عالما بسير النبي صلى الله عليه وسلم ليعلم آخر أوامره وأولها وحربه صلى الله عليه وسلم لمن حارب وسلمه لمن سالم وليعرف على ماذا حارب، ولماذا وضع الحرب وحرم الدم بعد تحليله وأحكامه صلى الله عليه وسلم التي حكم بها فمن كانت هذه صفته وكان ورعا في فتياه، مشفقا على دينه صليبا في الحق، حلت له الفتيا وإلا فحرام عليه أن يفتي بين اثنين، أو أن يحكم بين اثنين، وحرام على الإمام أن يقلده حكما أو يتيح له فتيا، وحرام على الناس أن يستفتوه لأنه إن لم يكن عالما بما ذكرنا، فلم يتفقه في الدين، وإن لم يكن مشفقا على دينه فهو فاسق، وإن لم يكن صليبا لم يأمر بمعروف، ولا نهى عن منكر، والأمر بالمعروف والنهي عن المنكر فرضان على الناس قال تعالى {ولتكن منكم أمة يدعون إلى لخير ويأمرون بلمعروف وينهون عن لمنكر وأولئك هم لمفلحون} وهذا متوجه إلى العلماء بالمعروف وبالمنكر، لأنه لا يجوز أن يدعو إلى الخير إلا من علمه، ولا يمكن

Most High has forbidden him to do that through His saying, Most High: "Do not pursue that of which you have no knowledge. Hearing, sight, and the heart—all of these will be questioned about"; and through His saying, Most High: "Among people is one who disputes concerning Allah without knowledge and follows every rebellious devil"; and through His saying, Most High: "Here you are: you have argued concerning that of which you have knowledge. Why, then, do you argue concerning that of which you have no knowledge? Allah knows, and you do not know"; and through His saying, Most High: "Here you are: you have argued concerning that of which you have knowledge. Why, then, do you argue concerning that of which you have no knowledge? Allah knows, and you do not know." He Most High said: "When you received it with your tongues and said with your mouths that of which you had no knowledge, reckoning it a trivial matter, while with Allah it was grave." It is obligatory for the jurist to know the accounts of the Prophet's ﷺ conduct, so that he may know his later commands and his earlier ones, his ﷺ warfare against those he fought and his peace with those with whom he made peace; so that he may know on what grounds he fought, why he laid down arms and forbade bloodshed after permitting it, and the judgments that he ﷺ delivered. Whoever possesses these qualities, exercises religious scrupulousness in his legal opinions, is solicitous for his religion, and stands firm in the truth is permitted to issue legal opinions. Otherwise, it is forbidden for him to issue a legal opinion between two people or to adjudicate between two people. It is forbidden for the ruler to entrust him with judicial authority or permit him to issue legal opinions, and it is forbidden for people to seek legal opinions from him. For if he does not know what we have mentioned, he has not acquired understanding of religion; if he is not solicitous for his religion, he is an evildoer; and if he is not firm, he will neither enjoin what is right nor forbid what is wrong. Enjoining what is right and forbidding what is wrong are two obligations upon people. He Most High said: "Let there be among you a community calling to goodness, enjoining what is right, and forbidding what is wrong. Those are the successful." This is addressed to those who know what is right and what is wrong, because only someone who knows goodness may call to it; only someone who recognizes what is right can enjoin it; and only someone who distinguishes

أن يأمر بالمعروف إلا من عرفه، ولا يقدر على إنكار المنكر إلا من يميزه. فإن كان مع ما ذكرنا قويا على إنفاذ الأمور حسن السياسة حل له القضاء والإمارة وإلا فلا قال رسول الله صلى الله عليه وسلم المؤمن القوي أحب إلى الله من المؤمن الضعيف وقال صلى الله عليه وسلم لأبي ذر يا أبا ذر إني أحب إليك ما أحب لنفسي، إنك ضعيف فلا تأمرن على اثنين ولا تولين مال يتيم، وكان أبو ذر رضي الله عنه ممن له أن يفتي ولم يكن ممن له أن يقضي، لأنه لم يكن له حسن التأتي في تناول ما يريد، بل كانت فيه عجرفة ومهاجمة ربما صار بها منذرا وقد أمر صلى الله عليه وسلم معاذا وأبا موسى إذ بعثهما قاضيين على اليمن، ومعلمين للدين، وأميرين بأن ييسرا ولا ينفرا، هذا على عظيم فضل أبي ذر وكريم سوابقه في الإسلام، وزهده وورعه ورفضه للدنيا وثباته على ما فارق عليه نبيه صلى الله عليه وسلم وصدعه بالحق وأنه كان لا تأخذه في الله لومة لائم، وتقدمه على أكثر الصحابة. فحد الفقه هو المعرفة بأحكام الشريعة من القرآن، ومن كلام المرسل بها، الذي لا تؤخذ إلا عنه، وتفسير هذا الحد كما ذكرنا المعرفة بأحكام القرآن وناسخها ومنسوخها والمعرفة بأحكام كلام رسول الله صلى الله عليه وسلم ناسخه ومنسوخه وما صح نقله مما لو يصح ومعرفة ما أجمع العلماء عليه، وما اختلفوا فيه، وكيف يرد الاختلاف إلى القرآن وكلام الرسول صلى الله عليه وسلم فهذا تفسير العلم بأحكام الشريعة وكل من علم مسألة واحدة من دينه على الرتبة التي ذكرنا، أجاز له أن يفتي بها، وليس جهله بما جهل بمانع من أن يفتي بما علم، ولا علمه بما علم بمبيح له أن يفتي فيما جهل وليس أحد بعد النبي صلى الله عليه وسلم إلا وقد غاب عنه من العلم كثير هو موجود عند غيره، فلو لم يفت إلا من أحاط بجميع العلم لما حل لأحد من الناس بعد رسول الله صلى الله عليه وسلم أن يفتي أصلا وهذا لا يقوله مسلم وهو إبطال للدين وكفر من قائله وفي بعثه النبي صلى الله عليه وسلم الأمراء

what is wrong can repudiate it. If, in addition to what we have mentioned, he is capable of carrying matters into effect and skilled in governance, he is permitted to hold judicial office and political command; otherwise, he is not. The Messenger of Allah ﷺ said: "The strong believer is more beloved to Allah than the weak believer." He ﷺ said to Abu Dharr: "Abu Dharr, I desire for you what I desire for myself. You are weak, so do not exercise command over two people, and do not undertake the administration of an orphan's property." Abu Dharr, may Allah be pleased with him, was among those permitted to issue legal opinions, but he was not among those permitted to adjudicate, because he lacked skill in approaching what he wished to accomplish. Rather, there was in him a brusqueness and an impetuousness through which he sometimes became a warner. He ﷺ commanded Muʿadh and Abu Musa, when he sent them to Yemen as judges, teachers of religion, and commanders, to make things easy and not drive people away. This was despite Abu Dharr's great merit, his noble early services to Islam, his asceticism, his scrupulousness, his rejection of worldly things, his steadfast adherence to the condition in which he had parted from his Prophet ﷺ, his outspoken proclamation of the truth, his refusal to fear anyone's reproach in matters concerning Allah, and his precedence over most of the Companions. The definition of jurisprudence, then, is knowledge of the rulings of the revealed law derived from the Qurʾan and from the speech of the one sent with it, from whom alone it may be received. The explanation of this definition is, as we have mentioned, knowledge of the Qurʾan's rulings, its abrogating and its abrogated provisions; knowledge of the rulings contained in the speech of the Messenger of Allah ﷺ, its abrogating and its abrogated provisions, and which reports of it have been soundly transmitted as distinct from those that [have not]; knowledge of what the scholars have agreed upon and what they have disagreed about; and knowledge of how disagreement is referred back to the Qurʾan and the speech of the Messenger ﷺ. This, then, explains knowledge of the rulings of the revealed law. Anyone who knows a single question of his religion to the standard we have described is permitted to issue a legal opinion on it. His ignorance of what he does not know does not prevent him from issuing legal opinions on what he knows, nor does his knowledge of what he knows permit him to issue legal opinions con-

إلى البلاد ليعلموا الناس القرآن وحكم الدين، ولم يكن أحد منهم يستوعب جميع ذلك، لأنه قد كان تنزل بعدهم الآيات والأحكام بيان صحيح بأن العلماء، وإن فاتهم كثير من العلم، فإن لهم أن يفتوا ويقضوا بما عرفوا.

cerning what he does not know. There is no one after the Prophet ﷺ from whom much knowledge, available to others, has not been hidden. If only someone who comprehended all knowledge could issue legal opinions, no person after the Messenger of Allah ﷺ would have been permitted to issue any legal opinion at all. No Muslim says this: it is an annulment of religion and unbelief on the part of whoever says it. The Prophet's ﷺ dispatching commanders to the various lands to teach people the Qur'an and the rulings of religion—although none of them comprehended all of that, since verses and rulings continued to be revealed after their departure—provides clear evidence that scholars, even if much knowledge has escaped them, may issue legal opinions and adjudicate on the basis of what they know.[11][12][13][14][15][16][17]

وهذا الباب أيضا بيان جلي على أن من علم شيئا من الدين علما صحيحا فله أن يفتي به، وعليه أن يطلب علم ما جهل مما سوى ذلك، ومن علم أن في المسألة التي نزلت حديثا قد فاته، لم يحل له أن يفتي في ذلك حتى يقع على ذلك الحديث. ومن لم يعلم الأحكام على الصفة التي ذكرنا قبل، لكن إنما أخذ المسائل تقليدا، فإنه لا يحل لمسلم أن يستفتيه، ولا يحل له أن يفتي بين اثنين، ولا يحل للإمام أن يوليه قضاء ولا حكما أصلا، ولا يحل له إن قلد ذلك أن يحكم بين اثنين وليس أحد بعد النبي صلى الله عليه وسلم إلا وهو يخطىء ويصيب فليس خطأه بمانع من قبول صوابه، وبالله تعالى التوفيق،

[11] **Translator's note (L2169):** The opening continues the preceding argument: the object of "does not attribute" is an opinion concerning religion. The Qur'anic quotations contain apparent transcription defects, including missing initial letters in words corresponding to "Paradise," "the believers," and "religion." Their identifiable meanings are rendered here. The final quotation also has a grammatically irregular wording in the clause rendered "Allah has power over all things."

[12] **Translator's note (L2170):** The final salutation continues in the next unit; only the fragment present here is translated.

[13] **Translator's note (L2171):** "Addressed us" completes the construction in the preceding unit; in the Arabic, the verb occurs there before the salutation that crosses the boundary.

[14] **Translator's note (L2172):** The quotation beginning "Here you are: you have argued" occurs twice in the supplied text; the repetition is preserved. Several Qur'anic words have apparent transcription defects involving omitted initial letters; their identifiable meanings are rendered.

[15] **Translator's note (L2174):** The supplied wording uses an unusual preposition in "I desire for you"; the sense is rendered without changing the substance of the quotation.

[16] **Translator's note (L2175):** The supplied word rendered "a warner" means precisely that, although the surrounding discussion of driving people away suggests a possible corruption of a word meaning "one who drives people away." The supplied reading is retained. The phrase distinguishing soundly transmitted reports from others contains "if" where a negation appears to be required. "[Have not]" marks the contextual interpretation of this apparently corrupt reading.

[17] **Qur'an references (L2169):** Qur'an 2:111 (Al-Baqarah); Qur'an 37:182 (As-Saffat); Qur'an 9:122 (At-Tawbah); Qur'an 2:106 (Al-Baqarah); Qur'an 14:4 (Ibrahim); Qur'an 17:36 (Al-Isra); Qur'an 22:3 (Al-Hajj); Qur'an 3:66 (Ali 'Imran); Qur'an 24:15 (An-Nur); Qur'an 3:104 (Ali 'Imran).

L2177 This chapter also provides clear evidence that anyone who has sound knowledge of something in religion may issue a legal opinion on it, and must seek knowledge of whatever else he does not know. Anyone who knows that there is a report concerning the question that has arisen which has escaped him is not permitted to issue a legal opinion on it until he finds that report. Anyone who does not know the rulings in the manner we described earlier, but has merely acquired positions through uncritical adherence to others, may not lawfully be consulted by a Muslim for a legal opinion. He may not lawfully issue a legal opinion between two people; the ruler may not lawfully appoint him to any judicial office or authority to adjudicate whatsoever; and, if he is entrusted with that, he may not lawfully adjudicate between two people. There is no one after the Prophet ﷺ who does not both err and judge correctly. His error does not prevent acceptance of what he gets right. Through Allah Most High comes success.

L2178–2184 Thus, no one who gives authoritative advice in religion or medicine is ever other than one of three people: either a learned person who gives an opinion according to the texts that have reached him, after searching and investigating thoroughly as he is obliged to do—such a person is rewarded whether he errs or is correct, and he is obliged to give opinions according to what he knows; or an evildoer who gives whatever opinion happens to occur to him, seeking to perpetuate a position of leadership or to acquire money, while knowing that he is giving an opinion that is not warranted; or an ignorant person of weak understanding who gives opinions without certain knowledge, supposing that he is correct, although he has not investigated as he should. Had he been sensible, he would have recognized his ignorance and would not have ventured into what he does not understand. Abu al-Zinad Siraj ibn Siraj and Khalaf related to me ibn ʿUthman al-Bahham and Abu ʿUthman Saʿid ibn Muhammed al-Darrab, all of them saying: "I heard ʿAbd Allah ibn Ibrahim al-Asili say: ʿAl-Abhari, Abu Bakr Muhammed ibn Salih, said to me: "What characterizes a jurist among you in al-Andalus?" I told him: "He reads al-Mudawwanah, and perhaps al-Mustakhrajah; then, once he has memorized the questions discussed in those two works, he gives legal opinions." He said to me: "Is that what he is?" I told him: "Yes." He said

فلا يوجد مفت في الديانة وفي الطب أبدا، إلا أحد ثلاثة أناسي: إما عالم يفتي بما بلغه من النصوص بعد البحث والتقصي، كما يلزمه، فهذا مأجور أخطأ وأصاب، وواجب عليه أن يفتي بما علم، وإما فاسق يفتي بما يتفق له، مستديما لرياسة أو لكسب مال، وهو يدري أنه يفتي بغير واجب، وإما جاهل ضعيف العقل، ويفتي بغير يقين علم، وهو يظن أنه مصيب، ولم يبحث حق البحث، ولو كان عاقلا لعرف أنه جاهل، فلم يتعرض لما لا يحسن. حدثني أبو الزناد سراج بن سراج، وخلف بن عثمان البحام، وأبو عثمان سعيد بن محمد الضراب كلهم يقولون: سمعت عبد الله بن إبراهيم الأصيلي يقول: قال لي الأبهري أبو بكر محمد بن صالح: كيف صفة الفقيه عندكم بالأندلس؟ فقلت له: يقرأ المدونة، وربما المستخرجة، فإذا حفظ مسائلهما أفتى. فقال لي: هذا ما هو؟ فقلت له: نعم، فقال لي: أجمعت الأمة على أن من هذه صفته لا يحل له أن يفتي. قال أبو محمد: علي بن أحمد، وحدثني أبو مروان عبد الملك بن أحمد المرواني قال: سمعت أحمد بن عبد الملك الإشبيلي المعروف بابن المكري، ونحن مقبلون من جنازة

to me: "The community has unanimously agreed that someone of this description is not permitted to give legal opinions."" Abu Muhammed ʿAli ibn Ahmad said: Abu Marwan ʿAbd al-Malik ibn Ahmad al-Marwani also related to me, saying: "I heard Ahmad ibn ʿAbd al-Malik al-Ishbili, known as Ibn al-Mukri, as we were returning from a funeral in the suburb on the bank of the river of Cordoba, when someone questioned him, saying to him: 'What level must a person attain before he is permitted to give legal opinions?'" Then Ahmad ibn al-Layth al-Ansari informed me that he had brought to him and to the judge Abu Bakr Yahya ibn ʿAbd al-Rahman ibn Waqid Ibn al-Mundhir's Book of Intermediate Disagreement. When the two had examined it, they told him: "This is a book such that anyone who does not have it in his house has not smelled the scent of knowledge." He said: "Ibn Waqid added, addressing me: 'And we do not have it in our houses, so we have not smelled the scent of knowledge.'" Abu Muhammed said: We have not adduced what we have mentioned as evidence for our position, but to hold them to what they themselves accept as binding. For, in their estimation, the statements of the eminent men of our country are more firmly established than direct observation and more deserving of obedience than what they have transmitted in the hadith of the Prophet ﷺ. In Allah Most High we seek refuge from abandonment. We have explained the character of inquiry, of the giver of legal opinions, and of the independent investigation that we command and whose practitioner we judge to be acting correctly: it consists in seeking the ruling on a question from the text of the Quran and authentic hadith; distinguishing the abrogating from the abrogated; construing the hadith reports in conjunction with one another and with the Quran; and construing the verses in conjunction with one another, as we have explained earlier in this book of ours. He is under absolutely no obligation beyond this. If he examines the statements of the Companions, the Successors, and those who came after them, generation after generation, then it is obligatory for him to consider all the statements of the scholars with the same scrutiny and to make the Quran and the Sunnah the arbiters over them. Whichever of them their judgment favors, he must adopt it as his conviction and give legal opinions according to it, discarding all the others, even if he finds nothing among those statements that have reached him. Rather, he must adhere to the text even if no report

من الربض بعدوة نهر قرطبة، وقد سأله سائل فقال له: ما المقدار الذي بلغه المرء، حل له أن يفتي. ثم أخبرني أحمد بن الليث الأنسري، أنه حمل إليه وإلى القاضي أبي بكر يحيى بن عبد الرحمن بن واقد كتاب الاختلاف الأوسط لابن المنذر فلما طالعاه قالا له: هذا كتاب من لم يكن عنده في بيته لم يشم رائحة العلم، قال: وزادني ابن واقد أن قال: ونحن ليس في بيوتنا، فلم نشم رائحة العلم. قال أبو محمد: لم نأت بما ذكرنا احتجاجا لقولنا، ولكن إلزاما لهم ما يلتزمونه، فإن قول أكابر أهل بلادنا عندهم أثبت من العيان وأولى بالطاعة مما رووا في حديث النبي صلى الله عليه وسلم وبالله تعالى نعوذ من الخذلان قد بينا صفة الطلب والمفتي والاجتهاد الذي نأمر به، ونصوب من فعله، وهو طلب الحكم في المسألة من نص القرآن، وصحيح الحديث، وطلب الناسخ من المنسوخ، وبناء الحديث بعضه مع بعض ومع القرآن، وبناء الآي بعضها مع بعض على ما بينا فيما سلف من كتابنا هذا، ليس عليه غير هذا البتة، وإن طالع أقوال الصحابة والتابعين ومن جاء بعدهم عصرا عصرا، ففرض عليه أن ينظر من أقوال العلماء كلها نظرا واحدا، ويحكم فيها القرآن والسنة، فلأيها حكم اعتقده وأفتى به واطرح سائرها، وإن لم يجد شيئا مما بلغه منها، بل عليه أن يأخذ بالنص وإن لم يبلغه أن قائلا قال به، لما قد بيناه في كلامنا في الإجماع من امتناع الإحاطة بأقوال العلماء السالفين، ومن قيام البرهان على أنه لا يخلو عصر من قائل الحق، فهذا هو الاجتهاد الصحيح الذي يؤجر من فعله على كل حال، فإن وافق الحق عند الله عز وجل أجر أجرا ثانيا على الإصابة، فحصل له أجران، وإن لم يوافق لإدراك الحق لم يأثم، وقد حصل له أجر الطلب للحق وإرادته كما قال الشاعر: وما كل موصوف له الحق يهتدي ولا كل من أم الصوى يستبينها وكل ما سمي اجتهادا من غير ما ذكرنا فهو باطل وإفك، وزين بأن سمي اجتهادا كما سمي الديغ سليما، والمهلكة مفازة، والأسود السخامي أبا البيضاء والأعمى بصيرا، وكما سمى قوم المسكر نبيذا، وطلاء وهو الخمر بعينها ويبين ما

has reached him that anyone has expressed that position, because of what we have already explained in our discussion of consensus: that it is impossible to encompass the statements of all earlier scholars, and that demonstration has established that no age is without someone who speaks the truth. This, then, is sound independent investigation, for which its practitioner is rewarded in every case. If he accords with the truth as it is with Allah, Mighty and Majestic, he is rewarded a second time for being correct, and thus receives two rewards. If he does not succeed in apprehending the truth, he incurs no sin, and he has obtained the reward for seeking the truth and intending it. As the poet said: "Not everyone to whom the truth is described finds guidance, Nor does everyone who heads toward the waymarks discern them." Everything called independent investigation other than what we have described is falsehood and fabrication, embellished by being called independent investigation, just as someone bitten by a venomous creature is called 'unharmed,' a deadly wilderness 'a place of deliverance,' a soot-black man 'father of the white woman,' and a blind man 'sighted'; and just as some people have called an intoxicating drink 'steeped drink' and 'cooked-down drink,' although it is wine itself. What we have said is made clear by his saying ﷺ: "When a judge undertakes independent investigation and errs, he has one reward; if he is correct, he has two rewards"—or words to that effect from him ﷺ. An issue arises here that we need to explain, because most people are mistaken about it: applying the designation 'memorization,' the designation 'knowledge,' and the designation 'juristic understanding' to everything that deserves any one of these names. These are names applied to distinct attributes, and so they must be explained. We shall therefore explain this with respect to knowledge of the revealed law, which we have undertaken to discuss in this work of ours. Success comes through Allah Most High; through Him, Mighty and Majestic, we receive support. There is no god but Him. We say, seeking the assistance of Allah Most High: 'Memorization' is a name applied to an attribute of a person, namely his recollection of most of the written material that has been composed, collected, and mentioned in his field of knowledge and in the subject he has chosen to pursue. Examples include someone who has memorized the written text of the Quran, someone who has memorized the written body of hadith and its texts, or someone who has memorized

قلنا قوله صلى الله عليه وسلم إذا اجتهد الحاكم فأخطأ فله أجر وإن أصاب فله أجران أو كما قال صلى الله عليه وسلم واعتراضها ههنا أمر نحتاج إلى تفسيره لغلط أكثر الناس فيه، وهو إيقاع اسم الحفظ واسم العلم واسم الفقه، على كل ما يستحق شيئا من هذه الأسماء، لأنها أسماء واقعة على صفات متغايرة، فوجب بيانها، فنفسر ذلك في علم الشريعة التي عرضنا في ديواننا هذا الكلام فيها، وبالله تعالى التوفيق، وبه عز وجل نتأيد لا إله إلا هو، فنقول وبالله تعالى نستعين: الحفظ: اسم واقع على وصفه المرء، وهي ذكره لأكثر سواد ما صنف وجمع، وذكر في علمه وغرضه الذي قصد، كحافظ سواد القرآن، وحافظ سواد الحديث ونصوصه، أو حافظ نصوص مسائل مذهبه الذي يقصد وينتحل. فهذا معنى الحفظ. وأما اسم العلم: فهو واقع على صفة في المرء، وهو اتساعه على الإشراف على أحكام القرآن، وروى الحديث صحيحه وسقيمه فقط، فإن أضاف إلى ذلك الوقوف على أقوال الناس، كان ذلك حسنا، كلما اتسع باع المرء في هذه المعاني زاد استحقاقه لاسم العلم، وهكذا في كل علم من العلوم، ويكون مع ذلك ذاكرا لأكثر ما عنده، وليس هذا حقيقة معنى لفظة العلم في اللغة، لكنه معناه في قولهم: فلان عالم، وفلان أعلم من فلان.

the texts of the questions belonging to the school of doctrine he pursues and professes. This is the meaning of memorization. As for the designation 'knowledge,' it applies to an attribute in a person, namely the breadth of his capacity to survey the rulings of the Quran and the transmitted accounts of hadith, both authentic and unsound, and nothing more. If he adds to this familiarity with people's statements, that is good. The greater a person's range in these matters, the greater his entitlement to the designation 'knowledge.' The same holds in every field of knowledge. Alongside this, he must remember most of what he possesses. This is not the actual meaning of the word 'knowledge' in the language, but it is its meaning when people say, 'So-and-so is learned,' and 'So-and-so is more learned than so-and-so.'[18][19]

L2185–2187 As for the explanation of the word 'knowledge' in the language, we have explained it in this book of ours and in our book entitled al-Fasl. As for the designation 'juristic understanding,' it applies to an attribute in a person: his understanding of what he possesses, his awareness and grasp of the true meanings of the expressions of the Quran and hadith, and the presence of all this in his recollection whenever he wishes to call upon it. The advocates of analogy add a further qualification here beyond ours: his knowledge of analogous cases among rulings and questions, and his ability to distinguish them. These, then, are the meanings of the aforementioned designations when people say, 'So-and-so is a memorizer,' 'So-and-so is learned,' and 'So-and-so possesses juristic understanding.' If someone asks, 'Is independent

[18]**Translator's note (L2179):** The unpunctuated expression «هذا ما هو» is ambiguous. It is rendered as a question, "Is that what he is?", in view of the following "Yes"; an emphatic statement, "That is what he is," is also possible. The account of Ahmad ibn ʿAbd al-Malik records the question put to him but supplies no answer before moving to the next report. No answer has been supplied in translation.

[19]**Translator's note (L2182):** The clause "even if he finds nothing among those statements that have reached him" is incomplete or awkward in the supplied Arabic; its unstated object has not been silently supplied. The supplied «واعتراضها» is grammatically irregular in context. The translation conveys the apparent sense that an issue arises at this point. The examples 'unharmed,' 'place of deliverance,' 'father of the white woman,' and 'sighted' reproduce the author's examples of euphemistic or contrary naming. 'Steeped drink' renders nabidh, and 'cooked-down drink' renders tilaʾ; the author's assertion that the intoxicant in question is wine is preserved.

وأما تفسير لفظة العلم في اللغة فقد فسرناه في كتابنا هذا، وفي كتابنا الموسوم بالفصل. وأما اسم الفقه: فهو واقع على صفة في المرء، وهي فهمه لما عنده، وتنبهه على حقيقة معاني ألفاظ القرآن والحديث، ووقوفه عليها، وحضور كل ذلك في ذكره متى أراده، ويزيد القياسيون علينا ههنا زيادة وهي: معرفته بالنظائر في الأحكام والمسائل وتمييزه لها، فهذه معاني الأسماء المذكورة في قولهم: فلان حافظ، وفلان عالم، وفلان فقيه. فإن قال قائل أيجوز الاجتهاد بحضرة النبي صلى الله عليه وسلم فالجواب أنه فيما لم يؤمروا به ولا نهوا عنه، ولكنه مباح لهم، جائز كاجتهادهم فيما يجعلونه علما للدعاء إلى الصلاة، ولم يكن ذلك على إيجاب شريعة تلزم، وإنما كان إنذارا من بعضهم لبعض، كقول أحدنا لجاره إذا نهض للصلاة: قم بنا إلى الصلاة حتى إذا نزل الوحي على النبي صلى الله عليه وسلم بما وافق رؤيا عبد الله بن زيد الأنصاري أبطل كل ما كانوا تراضوا به وقد اجتهد قوم بحضرته صلى الله عليه وسلم فيمن هم السبعون ألفا الذين يدخلون الجنة وجوههم كالقمر ليلة البدر فأخطؤوا في ذلك حتى بين لهم النبي صلى الله عليه وسلم من هم ولم يعنفهم في اجتهادهم وقد أخطؤوا فيه ولكن بين صلى الله عليه وسلم أنهم لم يصيبوا وأن الحق في خلاف ما قالوا كلهم. فإنما يجوز

investigation permissible in the presence of the Prophet ﷺ?', the answer is that it is permissible concerning matters that they have neither been commanded to do nor forbidden to do, but that are permissible for them. An example is their investigation of what they should adopt as a signal for the call to prayer. This did not amount to establishing an obligatory provision of revealed law; it was merely some of them notifying others, as when one of us says to his neighbor, upon rising for prayer, 'Come, let us go to prayer.' Then, when revelation descended upon the Prophet ﷺ in agreement with the dream of ʿAbd Allah ibn Zayd al-Ansari, it invalidated everything upon which they had mutually agreed. Some people also exercised independent investigation in his presence ﷺ concerning the identity of the seventy thousand who would enter Paradise with faces like the moon on the night when it is full. They were mistaken about this, until the Prophet ﷺ explained to them who they were. He did not rebuke them for their investigation, although they had been mistaken in it; rather, he explained —may Allah bless him and grant him peace ﷺ—that they had not been correct and that the truth differed from what all of them had said. Independent investigation is thus permissible only in interpreting something of this kind, in the means by which they notify one another that the time for prayer has arrived, and in similar matters. As for establishing an obligation, prohibiting something, or inflicting a prescribed punishment, it is forbidden to allow anyone to undertake independent investigation concerning it on the basis of his opinion alone, or to make any pronouncement whatsoever on that basis. For in doing so they would have been legislating what Allah had not authorized and fabricating claims against Allah Most High; Allah Most High has declared them free of that. Everything concerning which it was permissible for them—may Allah be pleased with them—to exercise independent investigation is permissible for us and for everyone until the Day of Resurrection. Whatever of this or anything else is forbidden to us was also forbidden to them, without any distinction. Abu al-Sanabil gave a legal opinion, through his independent investigation, concerning a pregnant woman whose husband had died. He adopted the verse concerning four months and ten days, and was mistaken while exercising independent investigation, so he has one reward because he did not arrive at the ruling of Allah Most High. As for the ha-

الاجتهاد في تأويل مثل هذا، وفيما يعرف به بعضهم بعضا بحضور الصلاة وما أشبه ذلك، وأما في إيجاب فرض أو تحريم شيء أو ضرب حد، فحرام أن يجوز فيه لأحد اجتهاد برأيه فقط، أو قول بوجه من الوجوه، لأنهم كانوا يكونون بذلك شارعين ما لم يأذن به الله، ومفترين على الله تعالى، وقد نزههم الله تعالى عن ذلك وكل ما جاز لهم رضوان الله عليهم أن يجتهدوا فيه فهو جائز لنا، ولكل إلى يوم القيامة، وما حرم علينا من ذلك وغيره فقد كان حراما عليهم ولا فرق. وقد أفتى أبو السنابل باجتهاده في المتوفى عنها زوجها وهي حامل، فأخذ بآية الأربعة أشهر وعشرا فأخطأ، وهو مجتهد فله أجر واحد لأنه لم يصب حكم الله تعالى. وأما حديث معاذ فيما روي من قوله: أجتهد رأيي، وحديث عبد الله بن عمر وفي قوله: أجتهد بحضرتك يا رسول الله، فحديثان ساقطان.

dith of Muʿadh, concerning the statement transmitted from him, ‘I exercise independent judgment by my own opinion,’ and the hadith of ʿAbd Allah ibn ʿUmar, concerning his statement, ‘Shall I exercise independent judgment in your presence, O Messenger of Allah?’, these are two discredited hadith reports[20]

L2188–2193 As for the report of Muʿadh, it was transmitted only from unnamed men from Homs. The report of ʿAbd Allah likewise has an interrupted chain of transmission and is not connected. If someone asks, “Is independent juristic exertion permissible for the prophets, peace be upon them?” the answer—and success comes through Allah Most High—is that supposing independent juristic exertion to be permissible for them in instituting a religious law concerning which they have received no revelation is grave unbelief. Sufficient to invalidate this is His command, Most High, to His Prophet ﷺ to say: {Say: I do not tell you that I possess the treasuries of Allah, nor do I know the unseen, nor do I tell you that I am an angel. I follow only what is revealed to me. Say: Are the blind and the seeing equal? Will you not then reflect?}; His saying: {Nor does he speak from desire. It is only a revelation revealed}; and His saying, Most High: {Had he fabricated some sayings against Us, We would have seized him by the right hand; then We would have severed his aorta}. Furthermore, he ﷺ would be asked about something and await revelation, saying, “Nothing has been sent down to me concerning this.” This occurs in a report concerning the obligatory alms on donkeys and the inheritance of two daughters together with a paternal uncle and a wife, and in numerous reports. If, however, the person asking about this means, “Is independent juristic exertion permissible for him in accepting two witnesses who may be inattentive?” then this is permissible. Rendering judgment on the basis of an oath that may be false is likewise permissible, because he ﷺ was explicitly commanded to do this. He ﷺ was not given knowledge of the unseen in every matter. He was commanded only to accept two Muslim witnesses whom he considered upright; or one similarly upright witness to-

أما حديث معاذ فإنما روي عن رجال من أهل حمص لم يسموا، وحديث عبد الله منقطع أيضا لا يتصل. فإن قال قائل: أيجوز للأنبياء عليهم السلام الاجتهاد؟ فالجواب وبالله تعالى التوفيق. إن من ظن أن الاجتهاد يجوز لهم في شرع شريعة لم يوح إليهم فيها فهو كفر عظيم ويكفي من إبطال ذلك أمره تعالى نبيه صلى الله عليه وسلم أن يقول {قل لا أقول لكم عندي خزآئن لله ولا أعلم لغيب ولا أقول لكم إني ملك إن أتبع إلا ما يوحى إلي قل هل يستوي لأعمى ولبصير أفلا تتفكرون} وقوله {وما ينطق عن لهوى * إن هو إلا وحي يوحى} وقوله تعالى {ولو تقول علينا بعض لأقاويل * لأخذنا منه بليمين * ثم لقطعنا منه لوتين} وأنه صلى الله عليه وسلم كان يسأل عن الشيء فينتظر الوحي ويقول ما أنزل علي في هذا شيء ذلك في حديث في زكاة الحمير وميراث البنتين مع العم والزوجة وفي أحاديث جمة وإن كان السائل عن هذا يعني أيجوز عليه الاجتهاد في قبول شاهدين لعلهما مغفلان؟ فهذا جائز والحكم بيمين لعلها كاذبة فهذا جائز لأنه صلى الله عليه وسلم بهذا أمر نصا وهو صلى الله عليه وسلم لم يؤت علم الغيب في كل موضوع وإنما أمر بقبول الشاهدين العدلين عنده من المسلمين أو العدل كذلك مع يمين الطالب أو المرأة الواحدة في الرضاع، أو الكافرين في الوصية في السفر، أو الواحد على رؤية الهلال، أو الأربعة العدول في الزنى، أو المرأتين مكان الرجل، أو يمين المدعى عليه إن مبطلا وإن محقا ما لم يعلم هو ببطلان الشهادة، أو قوله: ويسلط الله من يشاء على ظلم من يشاء حتى ينصف كل مظلوم يوم الحشر و {ووضع لكتاب فترى لمجرمين مشفقين مما فيه ويقولون يويلتنا ما لهذا لكتاب لا يغادر صغيرة

[20] **Translator’s note (L2187):** The supplied wording «عبد الله بن عمر وفي قوله» is awkward and may reflect a transcription or word-division error involving the name ʿAbd Allah ibn ʿAmr. The name is translated as supplied, without silently changing ʿUmar to ʿAmr.

gether with the claimant's oath; or one woman in matters of breastfeeding; or two unbelievers in a testamentary matter during travel; or one person concerning the sighting of the crescent moon; or four upright witnesses in cases of unlawful sexual intercourse; or two women in place of one man; or the defendant's oath, whether he is in the wrong or in the right, so long as he himself does not know that the testimony or the defendant's statement is false. Allah gives whomever He wills power to wrong whomever He wills, until He grants redress to everyone wronged on the Day of Gathering: {And the Book will be set down, and you will see the criminals apprehensive about what it contains. They will say: Woe to us! What is the matter with this Book? It leaves nothing small or great without enumerating it. They will find whatever they did present, and your Lord wrongs no one}. Nor is there an atom's weight for which He does not give recompense, except what He remits through repentance or through avoidance of major sins. What we have stated is an explicit text. He ﷺ explained this through his saying, "Anyone to whom I award anything belonging by right to his brother must not take it, for I am only assigning him a portion of the Fire"; and through his saying, peace be upon him, "Whoever swears a false oath upon this pulpit of mine, Allah forbids Paradise to him and makes the Fire his due"; and through his saying, peace be upon him, when the Hadrami said to him concerning his adversary, "Messenger of Allah, he is a wicked man who refrains from nothing." He, peace be upon him, had required the adversary to swear an oath, and he ﷺ said to the Hadrami, "You are entitled to nothing beyond that." Likewise, when his Companions said to him upon the killing of ʿAbd Allah ibn Sahl, "Messenger of Allah, will you accept the oaths of a Jew?" he ﷺ provided them with no alternative to that. And through his saying ﷺ to the two spouses exchanging imprecations, "One of you is lying. Will either of you repent?" He, peace be upon him, thus explained that he does only what his Lord Most High has commanded him. He was never charged with ensuring with certainty that a right reaches its rightful possessor, nor with knowing the defects of witnesses; neither have we been charged with any of that. He was commanded only to judge on the basis of evidence that he considered upright. He can do no more than judge according to the uprightness apparent to him and the outward knowledge available to him, just as

ولا كبيرة إلا أحصاها ووجدوا ما عملوا حاضرا ولا يظلم ربك أحدا} ولا مثقال ذرة إلا جازى عليها إلا ما أسقط من ذلك بالتوبة أو باجتناب الكبائر وهذا الذي قلنا هو نص جلي وقد بين ذلك صلى الله عليه وسلم بقوله فمن قضيت له بشيء من حق أخيه فلا يأخذه، فإنما أقطع له قطعة من النار وبقوله عليه السلام: من حلف على منبري هذا بيمين كاذبة حرم الله عليه الجنة وأوجب له النار وبقوله عليه السلام: إذا قال له الحضرمي في خصمه: يا رسول الله إنه فاجر لا يرع عن شيء وكان عليه السلام قد أوجب عليه اليمين فقال صلى الله عليه وسلم للحضرمي ليس لك إلا ذلك وإذ قال له أصحابه حين قتل عبد الله بن سهل: يا رسول الله أتقبل أيمان يهودي فلم يجعل لهم صلى الله عليه وسلم غير ذلك وبقوله صلى الله عليه وسلم للمتلاعنين إن أحدكما كاذب فهل منكم تائب. فبين عليه السلام أنه إنما يفعل ما أمره به ربه تعالى؛ ولم يكلف قط أن يعطي الحق صاحبه بيقين، ولا أن يعلم عيب الشهود، ولا كلفنا نحن شيئا من ذلك أيضا، وإنما أمر أن يقضي بالبينة العدلة عنده، ولا يقدر على أكثر من أن يحكم بالعدالة الظاهرة إليه، وبظاهر العلم عنده، وكما أمر بقبول اليمين من المنكر، وهما شيئان متغايران: أحدهما: بما شهدت به البينة، وألا يقضي على من حلف في قضية ألزم فيها اليمين فهذا هو الذي ألزم النبي صلى الله عليه وسلم وألزمنا نحن بعده صلى الله عليه وسلم والثاني أن يمكن صاحب الحق في علم الله تعالى من حقه، وهذا لا سبيل إلى علمه في كل موضع، فإن حرمنا هذا وحرمنا وفاق العدل عند الله عز وجل. فلا إثم ولا حرج، لأنه لا سبيل إلى علم ذلك بيقين، ولا كلفناه، وهذا لا يسمى اجتهادا على الإطلاق، ولكنه يقين اتباع ما أمر به عليه السلام من الحكم بالعدول على حسب ما يطيق على معرفته، وهو الظاهر، وبقبول يمين المنكر ولا سبيل إلى اجتهاد النبي صلى الله عليه وسلم في شرع الشرائع والأوامر عنده واردة متيقنة، ولا إشكال فيها.

he was commanded to accept the oath of the denying party. These are two different things. The first is [to judge] according to what the evidence attests, and not to rule against someone who has sworn an oath in a case in which an oath was required of him. This is what the Prophet ﷺ was required to do, and what we have been required to do after him ﷺ. The second is to enable the person who, in Allah Most High's knowledge, possesses the right to obtain that right. There is no way to know this in every instance. If we are denied this, and denied conformity with what is just in the sight of Allah, Mighty and Majestic, there is neither sin nor blame, because there is no way to know that with certainty, nor have we been charged with it. This is not called independent juristic exertion without qualification. Rather, it is certain adherence to what he, peace be upon him, was commanded: to judge on the basis of upright witnesses, according to the extent of his ability to ascertain their uprightness—which is its outward appearance—and to accept the denying party's oath. There is no scope for independent juristic exertion by the Prophet ﷺ in instituting religious laws. The commands have come to him with certainty and contain no ambiguity for him: he applies their specific provisions as distinct from their general provisions, their abrogating provisions as distinct from their abrogated provisions, and their exceptions as distinct from that from which the exceptions are made, with certain and directly witnessed knowledge concerning everything sent down to him. As for the independent juristic exertion with which we have been charged, it consists in seeking these matters. We have not directly witnessed all of them so as to know them; rather, we accept them from the trustworthy persons whose warnings Allah Most High commanded us to accept, until they lead us back to those who witnessed them. Neither they nor we know all of this with certain knowledge. If an objector raises his action, peace be upon him,

يعمل خاصها من عامها، وناسخها من منسوخها، ومستثناها من المستثنى منه، علم يقين ومشاهدة في جميع ما أنزل عليه. وأما الاجتهاد الذي كلفناه نحن، فهو طلب هذه المعاني، ولم نشاهدها كلها فنعلمها لكن نقبلها من الثقات الذين أمرنا الله تعالى بقبول نذارتهم إلى أن يبلغونا إلى الذين شهدوها، وهم ونحن لا نعلم كل ذلك علم يقين. فإن اعترض معترض بفعله عليه السلام في أخذ الفداء، فنزل من عتابه على ذلك ما نزل.

in taking ransom, whereupon the rebuke concerning it that was sent down was sent down,[21][22][23]

L2194–2195 the answer is that we do not deny that he, peace be upon him, might do something concerning which no prior prohibition had come to him from his Lord Most High. He is, however, not left with that: his attention must necessarily be drawn to it. As for an error on the part of the Prophet ﷺ while intending thereby to do good, we do not deny it; but he is absolutely never allowed to persist in it. This cannot occur in instituting a religious law, imposing an obligation, or declaring something forbidden. It concerns only something he considered permissible for himself because he had not previously been prohibited from it, as in his treatment of Ibn Umm Maktum, when {He frowned and turned away} was sent down. Some of those who permit independent juristic exertion through personal opinion in religion have invoked the affair of Solomon and David, peace be upon them: {And David and Solomon, when they were judging concerning the cultivated field, when the people's sheep strayed into it by night; and We were witnesses to their judgment}. Abu Muhammed said: This is a question concerning which people have differed in several ways. One group said, "Allah abrogated David's judgment through Solomon's judgment, peace be upon them both." Abu Muhammed said: This is false, because, had that been so, David would have been given understanding of it, since he would have been judging according to a command he had received before it was abrogated; Solomon would not have had a greater claim than he to being given understanding. Others said, "He judged on the basis of an established indication, but in doing

فالجواب: أننا لا ننكر أن يفعل عليه السلام ما لم يتقدم نهي من ربه تعالى له عنه، إلا أنه لا يترك وذلك، ولا بد من أن ينبه عليه وأما الوهم من النبي صلى الله عليه وسلم وهو يقصد بذلك فعل الخير فلسنا ننكره إلا أنه لا يقر عليه البتة، وهذا لا يجوز أن يكون في شرع شريعة، ولا إيجاب فرض، ولا تحريم، وإنما هو فيما قدره مباحا له، إذ لم ينه عنه قبل ذلك، لكن كفعله بابن أم مكتوم إذ نزلت: {عبس وتولى} وقد احتج بعضهم ممن أجاز الاجتهاد بالرأي في الدين، بأمر سليمان وداود عليهم السلام {وداوود وسليمان إذ يحكمان في لحرث إذ نفشت فيه غنم لقوم وكنا لحكمهم شاهدين} قال أبو محمد وهذه مسألة اختلف الناس فيها على وجوه، فقوم قالوا: نسخ الله حكم داود بحكم سليمان عليهما السلام. قال أبو محمد: وهذا باطل، لأنه لو كان كذلك لكان داود مفهما لها، لأنه كان يكون حاكما بأمر أمر به قبل أن ينسخ، ولما كان سليمان أولى بالإفهام منه. وقال بعضهم: حكم بدليل منصوب لم يوافق فيه الحقيقة وحكم سليمان فوافق الحقيقة. قال أبو محمد: والذي نقول به وبالله تعالى التوفيق: إن داود عليه السلام حكم بظاهر الأمر، مثل ما لو حكمنا نحن بشهادة شاهدين عدلين عندنا، وهما في علم الله عز وجل المغيب عنا مغفلان، فأطلع الله تعالى على غيب تلك المسألة سليمان عليه السلام. فأوحى إليه بيقين من هو صاحب الحق فيها، بخلاف شهادة الشهود أو نحو ذلك مما أفهم الله تعالى سليمان فيه بيقين عين صاحب الحق، فهذا وجه تلك الآية الذي لا يجوز خلافه، لبطلان كل تأويل غيره، ولقوله تعالى في الآية نفسها: {ففهمناها سليمان وكلا آتينا حكما وعلما وسخرنا مع داوود لجبال يسبحن ولطير وكنا فاعلين} فصح أن داود بالحكم والعلم الذي آتاه الله تعالى في تلك المسألة،

[21] **Translator's note (L2191):** The supplied wording says "the oaths of a Jew," with "a Jew" singular; this has been retained.

[22] **Translator's note (L2192):** The clause beginning "The first" lacks an explicit verb governing "according to what the evidence attests"; "[to judge]" supplies the apparent ellipsis. The supplied text reads يعمل, "he applies/acts," before "their specific provisions as distinct from their general provisions." The syntax is awkward and may reflect a corruption of يعلم, "he knows." The translation retains the supplied verb rather than silently substituting the latter reading.

[23] **Qur'an references (L2188):** Qur'an 6:50 (Al-An'am); Qur'an 53:4 (An-Najm); Qur'an 18:49 (Al-Kahf).

so did not accord with the actual truth; Solomon judged and accorded with the actual truth." Abu Muhammed said: What we maintain—and success comes through Allah Most High—is that David, peace be upon him, judged according to the outward circumstances, just as we might judge on the testimony of two witnesses whom we consider upright, while in the knowledge of Allah, Mighty and Majestic, which is concealed from us, they are inattentive. Allah Most High then disclosed to Solomon, peace be upon him, the unseen aspect of that case, revealing to him with certainty who possessed the right in it, contrary to the witnesses' testimony, or something similar through which Allah Most High made Solomon understand with certainty the identity of the rightful possessor. This is the interpretation of that verse from which no departure is permissible, because every other interpretation is false, and because of His saying, Most High, in the very same verse: {So We gave Solomon understanding of it, and to each We gave judgment and knowledge. And We subjected the mountains, glorifying, and the birds, together with David; and We were the doers}. It is thus established that David [judged] by the judgment and knowledge Allah Most High had given him in that case, and that Solomon—peace be upon them both—judged in it by the judgment and knowledge Allah Most High had given him concerning it, with the additional understanding of its actual truth.[24][25][26]

وأن سليمان عليهما جميعا السلام حكم فيها بالحكم والعلم الذي آتاه الله تعالى فيها بالفهم الزائد لحقيقتها.

L2196 As for the two women's claims to the child, and Solomon's calling, peace be upon him, for a knife to divide him between them, Solomon, peace be upon him, intended only to test their endurance. He never intended to cut the boy in two; he called for the knife only to give them that impression. Allah Most High may have commanded him to do this, just as He commanded Abraham, peace be upon him, to slaughter Ishmael, peace be upon him, although He Most High never intended his slaughter. He intended only to test Abraham's

وأما ادعاء المرأتين في الولد، ودعاء سليمان عليه السلام بالسكين ليشقه بينهما، فإن سليمان عليه السلام إنما أراد اختبار صبرهما، ولم يهم قط بشق الصبي، وإنما دعا بالسكين موهما لهما بذلك، وقد يكون الله تعالى أمره بذلك كما أمر إبراهيم عليه السلام بذبح إسماعيل عليه السلام، ولم يرد قط تعالى ذبحه، وإنما أراد اختبار صبر إبراهيم عليه السلام، واختبار صبر المرأتين فقط، ثم نهاه عن شقه، إذ لاح أيتهما أمه. كما نهى إبراهيم عن ذبح إسماعيل فهذا أيضا وجه ظاهر حسن، والله أعلم.

[24] **Translator's note (L2194):** The wording لا يترك وذلك, rendered "he is … not left with that," is syntactically irregular. The apparent sense is that he is not left uncorrected.

[25] **Translator's note (L2195):** In "It is thus established that David [judged]," the supplied Arabic lacks the verb "judged." It has been supplied in brackets to make the incomplete construction intelligible.

[26] **Qur'an references (L2194):** Qur'an 80:1 ('Abasa); Qur'an 21:78 (Al-Anbya); Qur'an 21:79 (Al-Anbya).

endurance, peace be upon him, and to test the two women's endurance. Then He forbade him to cut the child in two once it became apparent which of them was his mother, just as He forbade Abraham to slaughter Ishmael. This too is a clear and sound interpretation, and Allah knows best.

L2197–2200 As for the affair of Moses and al-Khidr, peace be upon them both, al-Khidr was a prophet receiving revelation. He did none of all that he did through independent judgment, as those without reason suppose; rather, he did all of it through revelation that Allah revealed to him. This is made clear by Allah the Exalted's explicit statement, recounting that he said to Moses: {As for the wall, it belonged to two orphan boys in the city, and beneath it was a treasure belonging to them. Their father had been righteous, so your Lord willed that they should reach maturity and extract their treasure, as a mercy from your Lord. I did not do it on my own command. That is the interpretation of what you could not bear patiently.} As for Moses, peace be upon him, questioning him about that, he did so only because he had forgotten his undertaking. We do not deny that prophets, peace be upon them, may forget. Our Prophet ﷺ prayed a fifth prayer-unit out of forgetfulness, and pronounced the concluding salutation after three units and after two out of forgetfulness. What we have said is explicitly stated in the Quran, in the Exalted's words recounting that Moses said to al-Khidr: {He said: Do not take me to task for what I forgot, and do not burden me with hardship in my affair.}

Abu Muhammed said: If they argue from what Abd Allah ibn Rabi' al-Tamimi related to us, from Umar ibn Abd al-Malik al-Khawlani, from Muhammed ibn Bakr al-Basri, from Sulayman ibn al-Ash'ath: Ibrahim ibn Musa related to us; Isa related to us; Usamah ibn Zayd related to us, from Abd Allah ibn Rafi', the freedman of Umm Salamah, who says: "The Messenger of Allah ﷺ said: 'I judge between you only according to my opinion in matters concerning which nothing has been sent down to me'"—this is a worthless, fabricated report, because this Usamah ibn Zayd is weak, and his reports cannot be used as evidence; there is agreement that he is such. Its falsity is made clear by the reports we mentioned at the beginning of this chapter, which describe his refraining, peace be upon him, from giving judgment

وأما أمر موسى والخضر عليهما السلام، فإن الخضر نبي موحى إليه، ولم يفعل شيئا من كل ما فعل باجتهاد، كما يظن من لا عقل له، وإنما فعل كل ذلك بوحي أوحاه الله إليه. وبيان ذلك نص الله تعالى بأن حكى عنه أنه قال لموسى {وأما لجدار فكان لغلامين يتيمين في لمدينة وكان تحته كنز لهما وكان أبوهما صالحا فأراد ربك أن يبلغآ أشدهما ويستخرجا كنزهما رحمة من ربك وما فعلته عن أمري ذلك تأويل ما لم تسطع عليه صبرا} وأما سؤال موسى عليه السلام له عن ذلك فإنما فعله ناسيا لعهده، ولسنا ننكر أن تنسى الأنبياء عليهم السلام وقد صلى نبينا صلى الله عليه وسلم خامسة ناسيا وسلم من ثلاث ومن اثنين ناسيا. وهذا الذي قلنا هو نص القرآن في قوله تعالى حاكيا عن موسى أنه قال للخضر: {قال لا تؤاخذني بما نسيت ولا ترهقني من أمري عسرا} قال أبو محمد: فإن احتجوا بما حدثناه عبد الله بن ربيع التميمي، عن عمر بن عبد الملك الخولاني، عن محمد بن بكر البصري، عن سليمان بن الأشعث، نا إبراهيم بن موسى، ثنا عيسى، نا أسامة بن زيد، عن عبد الله بن رافع مولى أم سلمة تقول قال رسول الله صلى الله عليه وسلم إنما أقضي بينكم برأيي فيما لم ينزل علي فيه فهذا حديث ساقط مكذوب لأن أسامة بن زيد هذا ضعيف لا يحتج بحديثه، متفق على أنه كذلك ويبين كذبه ما ذكرنا في أول هذا الباب من الأحاديث التي فيها تركه عليه السلام الحكم فيما لم ينزل عليه فيه شيء، وانتظاره الموحى في كل ذلك، ويكفي من ذلك قول الله تعالى آمرا له أن يقول {قل لا أقول لكم عندي خزآئن لله ولا أعلم لغيب ولا أقول لكم إني ملك إن أتبع إلا ما يوحى إلي قل هل يستوي لأعمى ولبصير أفلا تتفكرون} وقوله تعالى {وما ينطق عن الهوى * إن هو إلا وحي يوحى} وأمر الله

in matters concerning which nothing had been sent down to him, and his awaiting what was revealed in all of that. Sufficient in this regard are Allah the Exalted's words commanding him to say: {Say: I do not tell you that I possess the treasuries of Allah, nor do I know the unseen, nor do I tell you that I am an angel. I follow only what is revealed to me. Say: Are the blind and the sighted equal? Will you not then reflect?} And the Exalted's words: {Nor does he speak from desire. * It is only a revelation revealed.} And Allah the Exalted's command to him to say: {When Our signs are recited to them as clear proofs, those who do not expect to meet Us say: Bring a Quran other than this, or change it. Say: It is not for me to change it of my own accord. I follow only what is revealed to me. I fear, if I disobey my Lord, the punishment of a tremendous day.} Had he ﷺ legislated anything that had not been revealed to him, he would have been changing the religion of his own accord. Everyone who allows this has disbelieved and departed from Islam. In Allah the Exalted we seek refuge from abandonment.

If an objector argues on this issue from the Exalted's words, {We have sent down to you the Book in truth, so that you may judge between people by what Allah has shown you; and do not be an advocate for the treacherous}, then what Allah the Exalted showed him was the Reminder and revelation, according to the explicit wording of the verse, for its beginning is: {We have sent down to you the Book in truth, so that you may judge between people by what Allah has shown you; and do not be an advocate for the treacherous}. And the Exalted said: {They nearly tempted you away from what We revealed to you, so that you would fabricate something else against Us; then they would have taken you as a close friend.} He then threatened him over that, saying: {Then We would have made you taste double in life and double in death; then you would find no helper for yourself against Us.} Thus the Exalted made clear that, had he, peace be upon him, made anything obligatory in religion without revelation, he would have been fabricating against his Lord, the Exalted. Allah, mighty and majestic, protected him from that and declared whoever allows it of him an unbeliever. It is therefore established that he ﷺ does nothing except through revelation. Thus the

تعالى له أن يقول: {وإذا تتلى عليهم آياتنا بينات قال الذين لا يرجون لقآءنا ائت بقرآن غير هذآ أو بدله قل ما يكون لي أن أبدله من تلقآء نفسي إن أتبع إلا ما يوحى إلي إني أخاف إن عصيت ربي عذاب يوم عظيم} فلو أنه صلى الله عليه وسلم شرع شيئا لم يوح إليه به لكان مبدلا للدين من تلقاء نفسه، وكل من أجاز هذا فقد كفر وخرج عن الإسلام، وبالله تعالى نعوذ من الخذلان فإن احتج فيها معترض بقوله تعالى {إنآ أنزلنا إليك لكتاب بلحق لتحكم بين لناس بمآ أراك لله ولا تكن للخآئنين خصيما} فإن الذي أراه الله تعالى هو الذكر والوحي بنص الآية لأن أولها {إنآ أنزلنا إليك لكتاب بلحق لتحكم بين لناس بمآ أراك لله ولا تكن للخآئنين خصيما} وقال تعالى {وإن كادوا ليفتنونك عن لذي أوحينآ إليك لتفتري علينا غيره وإذا لاتخذوك خليلا} ثم توعده على ذلك فقال {إذا لأذقناك ضعف لحياة وضعف لممات ثم لا تجد لك علينا نصيرا} فبين تعالى أنه عليه السلام لو أوجب شيئا في الدين بغير وحي، لكان مفتريا على ربه تعالى، وقد عصمه الله عز وجل من ذلك وكفر من أجازه عليه فصح أنه صلى الله عليه وسلم لا يفعل شيئا إلا بوحي فسقط الاجتهاد الذي يدعيه أهل الرأي أو القياس جملة وقال تعالى {وأنزلنآ إليك لكتاب بلحق مصدقا لما بين يديه من لكتاب ومهيمنا عليه فحكم بينهم بمآ أنزل لله ولا تتبع أهوآءهم عما جآءك من لحق لكل جعلنا منكم شرعة ومنهاجا ولو شآء لله لجعلكم أمة واحدة ولكن ليبلوكم في مآ آتاكم فاستبقوا الخيرات إلى الله مرجعكم جميعا فينبئكم بما كنتم فيه تختلفون} فصح بهذه الآية أن كل نبي كان قبله، فهكذا كانوا أيضا، إنما اتبع كل نبي شرعته التي أوحي إليه بها فقط.

independent judgment claimed by the adherents of opinion or analogy is invalidated entirely.

The Exalted said: {We have sent down to you the Book in truth, confirming the Scripture that preceded it and watching over it. So judge between them by what Allah has sent down, and do not follow their desires, turning away from the truth that has come to you. For each of you We have appointed a law and a way. Had Allah willed, He would have made you one community, but so that He may test you in what He has given you. So vie with one another in good deeds. To Allah you will all return, and He will inform you concerning that over which you differed.} Thus it is established by this verse that every prophet before him was likewise: each prophet followed only his own law, which had been revealed to him.[27][28][29]

L2201–2209 As for worldly affairs and stratagems of war, provided that no prohibition concerning any of them had previously been issued and that—may Allah bless him and grant him peace—the Exalted had permitted him to act in them as he wished, we do not deny that he, peace be upon him, might manage all of that according to what he considered beneficial. If Allah the Exalted wished to confirm him in it, He confirmed him; and if He wished to introduce a prohibition preventing him from it in the future, He prohibited it. Nevertheless, all of that must necessarily have been among the things whose permissibility had previously been revealed to him. As for declaring things forbidden or obligatory, there is absolutely no way for that to occur. An example is the Prophet's ﷺ intention to make a peace agreement with Ghatafan in exchange for one-third of Medina's fruit harvest. This is permissible because they may give away as much of their property as they wish, provided that

[27] **Translator's note (L2197):** In the transmission chain, the feminine verb translated as "who says" appears to refer to Umm Salamah, but the supplied text does not explicitly say "from her" after identifying Abd Allah ibn Rafi' as her freedman.

[28] **Translator's note (L2198):** The supplied الموحى means "what is revealed," although the surrounding discussion concerns his awaiting revelation.

[29] **Qur'an references (L2197):** Qur'an 18:82 (Al-Kahf); Qur'an 18:73 (Al-Kahf); Qur'an 6:50 (Al-An'am); Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 10:15 (Yunus); Qur'an 17:73 (Al-Isra); Qur'an 17:75 (Al-Isra); Qur'an 5:46 (Al-Ma'idah); Qur'an 5:48 (Al-Ma'idah).

وأما أمور الدنيا ومكايد الحروب ما لم يتقدم نهي عن شيء من ذلك وأباح صلى الله عليه وسلم تعالى له التصرف فيه كيف شاء فلسنا ننكر أن يدبر عليه السلام كل ذلك على حسب ما يراه صلاحا، فإن شاء الله تعالى إقراره عليه أقره، وإن شاء إحداث منع له من ذلك في المستأنف منع، إلا أن كل ذلك مما تقدم الوحي إليه بإباحته إياه ولا بد. وأما في التحريم والإيجاب فلا سبيل إلى ذلك البتة وذلك مثل ما أراد النبي صلى الله عليه وسلم أن يصالح غطفان على ثلث ثمار المدينة فهذا مباح، لأن لهم أن يهبوا من أموالهم ما أحبوا ما لم ينهوا على ذلك، ولهم أن يمنعوه ما لم يؤمروا بإعطائه وكذلك منازله صلى الله عليه وسلم في حروبه له أن ينزل من الأرض حيث شاء ما لم ينه عن مكان بعينه أو يؤمر بمكان بعينه وكذلك قوله صلى الله عليه وسلم في تلقيح ثمار أهل المدينة لأنه مباح للمرء أن يلقح نخله ويذكر تينه، ومباح أن يترك فلا يفعل شيئا من ذلك. وقد أخبرني محمد بن عبد الله الهمداني عن أبيه: أنه ترك تينه سنين دون تذكير فاستغنى عن التذكير، فلعل النخل كذلك، لو توبع عليه ترك التلقيح سنة بعد سنة لاستغنى عن ذلك. وهذا كله ليس من أمور الدين الواجبة والمحرمة

they have not been prohibited from doing so; and they may withhold it, provided that they have not been commanded to give it. The same applies to his ﷺ encampments during his wars: he could encamp wherever he wished on the land, provided that he had not been prohibited from a particular place or commanded to occupy a particular place. The same applies to his ﷺ statement concerning the pollination of the fruit trees of the people of Medina, because a person is permitted to pollinate his date palms and to caprify his fig trees, and is permitted to refrain and do none of that. Muhammed ibn Abd Allah al-Hamdani informed me, from his father, that he left his fig trees for years without caprification, and they came to have no need of caprification. Perhaps date palms would likewise come to have no need of it if the omission of pollination were continued year after year. None of this belongs at all to the obligatory and forbidden matters of religion. These are merely permissible things among the affairs of livelihood: whoever wishes may do them, and whoever wishes may leave them. The independent judgment that is prohibited is only that concerning the declaration of things as forbidden or obligatory without a text. In the report about pollination, the Prophet ﷺ explicitly stated our position, saying ﷺ: "You know better the affairs of your worldly life."

Abd Allah ibn Yusuf ibn Nahi related this report to us, from Ahmad ibn Fath, from Abd al-Wahhab ibn Isa, from Ahmad ibn Muhammed, from Ahmad ibn Ali, from Muslim: Abu Bakr ibn Abi Shaybah and Umar and al-Naqid related to us, both of them from Aswad ibn Amir: Hammad ibn Salamah related to us, from Hisham ibn Urwah and Thabit—Hisham from his father, from Aishah, and Thabit from Anas—that the Messenger of Allah, may Allah bless him and grant him peace, passed some people pollinating date palms and said: "If you did not do so, they would turn out well." He said: They produced poorly developed dates. He then passed them and said: "What is wrong with your date palms?" They said: "You said such-and-such." He said: "You know better the affairs of your worldly life." Abu Muhammed said: This is a clear explanation, together with the soundness of its chain of transmission, of the distinction between opinion concerning worldly affairs and religion, and of the fact that he ﷺ speaks concerning religion only from Allah the Exalted,

في شيء، إنما هي أشياء مباحة من أمور المعاش، من شاء فعل ومن شاء ترك، وإنما الاجتهاد الممنوع منه ما كان في التحريم والإيجاب فقط بغير نص وقد نص النبي صلى الله عليه وسلم في حديث التلقيح على قولنا وقال صلى الله عليه وسلم أنتم أعلم بأمور دنياكم وقد حدثنا بهذا الحديث عبد الله بن يوسف بن ناهي، عن أحمد بن فتح، عن عبد الوهاب بن عيسى، عن أحمد بن محمد، عن أحمد بن علي، عن مسلم، حدثنا أبو بكر بن أبي شيبة وعمر والناقد، وكلاهما عن أسود بن عامر، ثنا حماد بن سلمة، عن هشام بن عروة وثابت وهشام، عن أبيه عن عائشة وثابت عن أنس أن رسول الله صلى الله عليه وسلم مر بقوم يلقحون النخل فقال لو لم تفعلوا لصلح قال فخرج شيصا، فمر بهم فقال: ما لنخلكم؟ فقالوا: قلت كذا وكذا، قال: أنتم أعلم بأمور دنياكم. قال أبو محمد: فهذا بيان جلي مع صحة سنده في الفرق بين الرأي في أمر الدنيا والدين وأنه صلى الله عليه وسلم لا يقول الدين إلا من عند الله تعالى وأن سائر ما يقول فيه برأيه ممكن فيه أن يشار عليه بغيره فيأخذ عليه السلام به، لأن كل ذلك مباح مطلق له، وإننا أبصر منه بأمور الدنيا التي لا خير معها إلا في الأقل، وهو أعلم منا بأمر الله تعالى وبأمر الدين المؤدي إلى الخير الحقيقي، وهذا نص قولنا. وبالله تعالى التوفيق. وفي هذا كفاية والحمد رب العالمين. ومن ذلك ما قال أبو بكر يوم الحديبية لرسول الله صلى الله عليه وسلم إذ قال له بعض من حضر أرى أن نميل على عيال هؤلاء فقال أبو بكر: نرى أن نمضي لوجهنا فهذا كله مباح للإمام أن يغزو، وله أن يؤخر الغزو ويومه ذلك وشهره ذلك، ويغزو بعد ذلك. فاعلم الآن أن الاجتهاد إنما هو طلب الحقيقة من الوجوه المؤدية إليها، لا من حيث لا يؤدي إليها والطلب، كما ذكرنا هو الاستدلال، فالاستدلال والاجتهاد شيء واحد، وقد يستدل من لا يقع على حقيقة الدليل. وكون الشيء في نفسه حقا هو شيء آخر. لأنه قد يكون الشيء

and that, in all other matters concerning which he speaks according to his own judgment, it is possible for a different course to be suggested to him and for him, peace be upon him, to adopt it, because all of that is permissible and unrestricted for him. We are more discerning than he concerning worldly affairs, in which there is good only rarely, while he knows better than we the command of Allah Most High and the affairs of religion that lead to true good. This is precisely our position. Success comes through Allah Most High. This suffices, and praise be to the Lord of all worlds. Among such instances is what Abu Bakr said to the Messenger of Allah, may Allah bless him and grant him peace ﷺ, on the day of al-Hudaybiyyah, when one of those present said to him, "I think we should turn against these people's dependants," and Abu Bakr said, "We think we should proceed toward our destination." All of this is permissible for the imam: he may undertake a military expedition, and he may postpone the expedition on that day and in that month and undertake it thereafter. Know now that independent legal inquiry (ijtihād) is simply seeking the truth through avenues that lead to it, not through those that do not lead to it. Seeking, as we have mentioned, is inference from evidence (istidlāl); thus inference from evidence and independent legal inquiry are one and the same. Someone may engage in inference without grasping the true nature of the evidence. A thing's being true in itself is a separate matter, because a thing may be true without the person seeking it finding it, and that does no harm to the truth. In our homes, for example, there are things that other people do not know. Neither the ignorance of those ignorant of them nor their supposing them to be otherwise than they are changes the truth from what it is, just as someone's knowing it does not [increase it] by a degree in its being true. Known truth and unknown truth are equal in being true: both fall under the genus of truth. Any two things that fall under a single species or a single genus are truly equal with respect to that species and that genus—we mean with respect to what belonging to that genus or that species entails for them. Everyone whom a report from the Prophet, may Allah bless him and grant him peace ﷺ, reaches is obliged to investigate it. If he does not, he has disobeyed Allah Most High. Anyone against whom an authoritative proof is established from foundational principles that he has verified and acknowledged to be true, so

حقا ولا يوافق له طالبه، ولا يضر ذلك الحق، كما أن في منازلنا أشياء لا يعلمها غيرنا من الناس، وليس جهل من جهلها أو ظن فيها غير ما فيها مما يحيل الحق عن وجهه، كما لا نريده علم من علمه درجة في أنه حق، والحق المعلوم والحق المجهول سواء في أنهما حق، واقعان تحت جنس الحق، وكل شيئين وقعا تحت نوع واحد أو تحت جنس واحد، فإنهما متساويان في ذلك النوع وذلك الجنس مساواة صحيحة، نعني فيما أوجبه لهما تلك الجنسية أو تلك النوعية وكل من بلغه عن النبي صلى الله عليه وسلم خبر فقد لزمه البحث عنه فإن لم يفعل فقد عصى الله تعالى. وكل من قامت عليه حجة من أصول صححها. وأقر بأنها حق، فلاحت له وفهمها، ثم لم يرجع إلى موجبها لتقليد، أو لأنه ظن أن ههنا حجة أخرى لا يعلمها فهو فاسق، وذلك نحو من أقر بخبر الواحد، فأتاه حديث صحيح مسند، فتركه لقياس أو لهوى، أو تقليدا لمالك أو للشافعي أو لأبي حنيفة أو لأحمد أو لداود، أو لصاحب من الصحابة أو تابع، أو فقيه قديم أو حديث معتقدا أن ذلك الفقيه أو الصاحب كان عنده فضل علم جهله هو، أو أن النص الذي قاس عليه أحق أن يتبع، فهو فاسق ساقط العدالة عاص لله عز وجل. وأما من تعلق بحديث آخر معارض للحديث الذي بلغه، فما دام لا يحقق أصلا في بناء الأحاديث بعضها على بعض، فهو مأجور على اجتهاده وإن كان مخطئا ولا إثم عليه في خطئه، وهكذا القول في الآي، وفي الأحاديث والآي، ولا فرق. وأما من ذكرنا قبل فبخلاف ذلك، لأنه ترك الحق وهو يعلمه، فدخل فيمن شاق الرسول من بعد ما تبين له الهدى. وأما إذا حقق أصلا في بناء الأحاديث أو الآي، أو الأحاديث مع الآي فالتزمه، ثم لم يعتقد موجبه فهو فاسق كما قدمنا للآية التي قال تعالى فيها {ومن يشاقق لرسول من بعد ما تبين له لهدى ويتبع غير سبيل لمؤمنين نوله ما تولى ونصله جهنم وسآءت مصيرا} وهذا الذي فعل ما ذكرنا، فقد ترك ما أقر بلسانه أنه هدى وأنه أمر الله تعالى ورسوله عليه السلام، وصار فيمن شهد على نفسه.

that it becomes apparent to him and he understands it, but who then does not return to what it entails because of uncritical adherence to an authority, or because he supposes that there is another authoritative proof here of which he is unaware, is defiantly disobedient. An example is someone who accepts the report of a single transmitter, then receives an authentic hadith with a connected transmission chain but abandons it for an analogy, a personal inclination, or uncritical adherence to Malik, al-Shafi'i, Abu Hanifah, Ahmad, Dawud, a Companion, a Successor, or an earlier or later jurist, believing that this jurist or Companion possessed additional knowledge of which he himself was ignorant, or that the text upon which he based his analogy deserves more to be followed: such a person is defiantly disobedient, disqualified from moral probity, and disobedient to Allah, Mighty and Majestic. As for someone who relies on another hadith that conflicts with the hadith that has reached him, so long as he has not established a foundational principle for construing hadiths in relation to one another, he is rewarded for his independent legal inquiry, even if he is mistaken, and incurs no sin for his error. The same applies to verses, and to hadiths together with verses; there is no difference. The person we mentioned previously, however, is otherwise, because he abandoned the truth while knowing it, thereby becoming one of those who oppose the Messenger after guidance has become clear to them. But if he has established a foundational principle for construing hadiths, verses, or hadiths together with verses, and has committed himself to it, yet then does not believe what it entails, he is defiantly disobedient, as we stated earlier, because of the verse in which the Most High says: "Whoever opposes the Messenger after guidance has become clear to him, and follows a path other than that of the believers, We shall turn him toward what he has turned toward and make him burn in Hell—an evil destination." The person who has done what we have described has abandoned what he acknowledged with his own tongue to be guidance and the command of Allah Most High and His Messenger, peace be upon him, and has become one of those who testify against themselves. The same applies to someone who refuses to accept the report of a single transmitter, or refuses to accept the manner of proceeding through the correct construction of the texts in relation to one another, when authoritative proof concerning all of this has been established

وكذلك من أبى قبول خبر الواحد، أو أبى قبول وجه العمل في البناء الصحيح في النصوص، فأقيمت الحجة عليه في ذلك كله، من براهين راجعة إلى النصوص وفهمها ولاحت له فلم يرجع إلى الحق في ذلك، وإنما يعذر من لم تقم عليه حجة بجهله فقط، وكذلك من قامت عليه البراهين في إبطال القياس فتمادى عليه. وأما من أجاز أن يكون صاحب فمن دونه ينسخ أمرا أمر به رسول الله صلى الله عليه وسلم أو يحدث شريعة فهذا كافر مشرك حلال الدم والمال، بمنزلة اليهود والنصارى، وعليه لعنة الله ولعنة اللاعنين والملائكة والناس أجمعين، ونحن برآء منه وهو بريء منا، فإن لم تقم عليه الحجة فهو مخطىء مأجور مرة لقصده إلى الخير، وبالله تعالى التوفيق وهو حسبنا ونعم الوكيل

against him through demonstrations referring back to the texts, and he has understood them and they have become apparent to him, yet he does not return to the truth concerning it. Only someone against whom authoritative proof has not been established is excused on account of his ignorance. The same applies to someone to whom demonstrations invalidating analogy have been established, yet who persists in it. As for someone who allows that a Companion, or anyone below him, may abrogate a command issued by the Messenger of Allah—may Allah bless him and grant him peace—or introduce a religious law, such a person is an unbeliever and a polytheist whose blood and property are lawful, in the same position as the Jews and Christians. Upon him is the curse of Allah and the curse of those who curse, of the angels, and of all people. We disavow him, and he is dissociated from us. If, however, authoritative proof has not been established against him, he is mistaken and receives one reward for his intention to do good. Success

comes through Allah Most High. He suffices us, and an excellent Trustee is He.[30][31][32][33][34][35][36]

[30] **Translator's note (L2201):** The supplied text places "may Allah bless him and grant him peace" between "permitted" and "the Exalted," where "Allah the Exalted" would ordinarily be expected as the subject. The displaced salutation and the irregular wording are preserved rather than silently repaired.

[31] **Translator's note (L2202):** "Caprify" renders the technical cultivation term for treating female fig trees with male figs to facilitate pollination. The supplied "Umar and al-Naqid" appears to contain a transcription error for the single transmitter Amr al-Naqid. The wording supplied is retained; "both of them" consequently sits awkwardly after what appears to be a list of three names. The salutation at the end is incomplete and continues in the next unit.

[32] **Translator's note (L2203):** The opening words complete the salutation begun in the preceding unit.

[33] **Translator's note (L2205):** The wording rendered "does not [increase it]" is corrupt: the supplied text has a form meaning "we do not want it," where the syntax and argument appear to require "does not increase it." The bracketed rendering makes this conjecture explicit. The praise formula lacks the usual explicit "to Allah"; the translation preserves its intelligible sense without adding that name.

[34] **Translator's note (L2208):** The Qur'anic quotation is recognizable as 4:115. Its supplied spelling repeatedly omits the initial alif of the definite article; the English follows the recoverable wording. The final blessing begins here and continues in the next unit; only its opening fragment is translated here.

[35] **Translator's note (L2209):** The opening words complete the blessing begun in the preceding unit.

[36] **Qur'an references (L2201):** Qur'an 4:115 (An-Nisa).



PRECISION IN THE FOUNDATIONS OF LEGAL RULINGS

الباب 32: النيات والخطأ والعمد

Chapter 32: Intentions, Error and Deliberate Acts

Ibn Ḥazm · Arabic–English parallel edition

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[Chapter Thirty-Two: The Obligation of Intentions in All Actions; the Distinction between an Error Whose Performance Was Deliberate but Was Not Intended to Contravene What Was Commanded, an Error Whose Performance Was Not Deliberate, and an Action Accompanied by the Intention to Perform It; and When a Person's Action Brings Reward or Sin upon Another, and When It Does Not]

L2210

L2211–2212 Abu Muhammed said: Allah, Mighty and Majestic, said: "They were commanded only to worship Allah, devoting religion sincerely to Him, inclining to true faith, to establish prayer, and to give the obligatory alms; that is the upright religion." The Most High said: "There is no good in much of their private conversation, except for one who enjoins charity, a recognized good, or reconciliation between people. Whoever does that seeking Allah's good pleasure, We shall grant him a tremendous reward." He said: "I do not say to you that I possess Allah's treasuries, nor do I know the unseen, nor do I say that I am an angel. Nor do I say of those whom your eyes disdain that Allah will never grant them any good. Allah knows best what is within their souls. I would then indeed be among the wrongdoers." The Most High said: "Allah was indeed pleased with the believers when they pledged allegiance to you beneath the tree. He knew what was in their hearts, so He sent tranquillity down upon them and rewarded them with a victory near at hand." The Most High said: "Have they not travelled through the earth, so that they might have hearts with which to understand or ears with which to hear? For it is not eyes that become blind; rather, it is the hearts within the breasts that become blind." The Most High said: "When the hypocrites come to you, they say, 'We testify that you are indeed the Messenger of Allah.' Allah knows that you are indeed His Messenger, and Allah testifies that the hypocrites are indeed liars." Hammam ibn Ahmad related to us: 'Abd Allah ibn Ibrahim related to us: Abu Zayd al-Marwazi related to us: al-Firabri related to us: al-Bukhari related to us: Abu Nu'aym related to us: Zakariyya related to us, from 'Amir—that is, al-Sha'bi—who said: I heard al-Nu'man ibn Bashir say: I heard the Prophet, may Allah bless him and grant him peace ﷺ, say—he

[الباب الثاني والثلاثون في وجوب النيات في جميع الأعمال والفرق بين الخطأ الذي تعمد فعله ولم يقصد به خلاف ما أمر وبين الخطأ الذي لم يتعمد فعله وبين العمل المصحوب بالقصد إليه، وحيث يلحق عمل المرء غيره بأجر أو إثم وحيث لا يلحق]

قال أبو محمد قال الله عز وجل {وما أمروا إلا ليعبدوا الله مخلصين له لدين حنفآء ويقيموا لصلاة ويؤتوا لزكاة وذلك دين لقيمة} وقال تعالى {لا خير في كثير من نجواهم إلا من أمر بصدقة أو معروف أو إصلاح بين لناس ومن يفعل ذلك بتغآء مرضات لله فسوف نؤتيه أجرا عظيما} وقال {ولا أقول لكم عندي خزآئن لله ولا أعلم لغيب ولا أقول إني ملك ولا أقول للذين تزدري أعينكم لن يؤتيهم لله خيرا لله أعلم بما في أنفسهم إني إذا لمن لظالمين} وقال تعالى {لقد رضي لله عن لمؤمنين إذ يبايعونك تحت لشجرة فعلم ما في قلوبهم فأنزل لسكينة عليهم وأثابهم فتحا قريبا} وقال تعالى {أفلم يسيروا في لأرض فتكون لهم قلوب يعقلون بها أو آذان يسمعون بها فإنها لا تعمى لأبصار ولكن تعمى لقلوب لتي في لصدور} وقال تعالى {إذا جآءك لمنافقون قالوا نشهد إنك لرسول لله ولله يعلم إنك لرسوله ولله يشهد إن لمنافقين لكاذبون} حدثنا حمام بن أحمد حدثنا عبد الله بن إبراهيم، ثنا أبو زيد المروزي، ثنا الفربري، ثنا البخاري، ثنا أبو نعيم، ثنا زكريا، عن عامر هو الشعبي سمعت النعمان بن بشير سمعت النبي صلى الله عليه وسلم يقول فذكر الحديث وفيه ألا وإن في الجسد مضغة إذا صلحت صلح الجسد كله وإذا فسدت فسد الجسد كله ألا وهي القلب.

then recounted the hadith, which includes: “Indeed, in the body there is a morsel of flesh: when it is sound, the whole body is sound and when it is corrupt, the whole body is corrupt. Indeed, it is the heart.”[1][2]

L2213–2216 Abd Allah ibn Yusuf related to us: Ahmad ibn Fath related to us: Abd al-Wahhab ibn Isa related to us: Ahmad ibn Muhammed related to us: Ahmad ibn Ali related to us: Muslim ibn al-Hajjaj related to us: Abd Allah ibn Maslamah ibn Qaʿnab related to us: Dawud—meaning Ibn Qays—related to us, from Abu Saʿid, the client of Amir ibn Kurayz, from Abu Hurayrah, who said: The Messenger of Allah, may Allah bless him and grant him peace ﷺ, said—he then mentioned the report, which includes: “Godfearingness is here,” pointing to his chest three times.

Judge Hammam ibn Ahmad related to us: Abd Allah ibn Ibrahim al-Asili related to us: Abu Zayd al-Marwazi related to us: Muhammed ibn Yusuf al-Firabri related to us: Muhammed ibn Ismaʿil al-Bukhari related to us: al-Humaydi related to us: Sufyan related to us: Yahya ibn Saʿid al-Ansari related to us, saying: Muhammed ibn Ibrahim al-Taymi informed me that he heard Alqamah ibn Waqqas al-Laythi say: I heard Umar ibn al-Khattab say from the pulpit: I heard the Messenger of Allah, may Allah bless him and grant him peace ﷺ, say: “Actions are only according to intentions, and each person has only what he intended.”

Abd Allah ibn Yusuf ibn Nami related to us: Ahmad ibn Fath related to us: Abd al-Wahhab ibn Isa related to us: Ahmad ibn Muhammed related to us: Ahmad ibn Ali related to us: Muslim ibn al-Hajjaj related to us: Amr al-Naqid related to us: Kathir ibn Hisham related to us: Jaʿfar ibn Barfan related to us, from Yazid al-Asamm, from Abu Hurayrah, who said: The Messenger of Allah, may Allah bless him and grant him peace ﷺ, said: “Allah does not

حدثنا عبد الله بن يوسف، ثنا أحمد بن فتح، نا عبد الوهاب بن عيسى، نا أحمد بن محمد، نا أحمد بن علي، نا مسلم بن الحجاج، نا عبد الله بن مسلمة بن قعنب، نا داود يعني ابن قيس عن أبي سعيد مولى عامر بن كريز عن أبي هريرة قال قال رسول الله صلى الله عليه وسلم فذكر الحديث وفيه التقوى ههنا ويشير إلى صدره ثلاث مرات. حدثنا القاضي حمام بن أحمد، ثنا عبد الله بن إبراهيم الأصيلي، ثنا أبو زيد المروزي، نا محمد ابن يوسف الفربري، نا محمد بن إسماعيل البخاري، نا الحميدي، نا سفيان، نا يحيى بن سعيد الأنصاري قال: أخبرني محمد بن إبراهيم التيمي، أنه سمع علقمة بن وقاص الليثي يقول: سمعت عمر بن الخطاب يقول على المنبر سمعت رسول الله صلى الله عليه وسلم يقول إنما الأعمال بالنيات وإنما لكل امرىء ما نوى. حدثنا عبد الله بن يوسف بن نامي، نا أحمد بن فتح، نا عبد الوهاب بن عيسى، نا أحمد بن محمد، نا أحمد بن علي، نا مسلم بن الحجاج، نا عمرو الناقد، نا كثير بن هشام، نا جعفر بن برفان، عن يزيد الأصم عن أبي هريرة قال قال رسول الله صلى الله عليه وسلم إن الله لا ينظر إلى صوركم وأموالكم ولكن ينظر إلى قلوبكم وأعمالكم. قال أبو محمد: فصح بكل ما ذكرنا أن النفس هي المأمورة بالأعمال، وأن الجسد آلة لها، فإن نوت النفس بالعمل الذي تصرف فيه الجسد وجها ما، فليس لها غيره، وصح أن الله تعالى لا يقبل إلا ما أمر به، بالإخلاص له، فكل عمل لم يقصد به الوجه الذي أمر الله تعالى به فليس ينوب عما أمر الله تعالى به، فبطل قول من قال: إن من توضأ تبردا أو تعليما، أو تيمم بغير نية، أو لم يأكل ولا شرب ولا وطأ بغير نية، أو مشى في المناسك بغير نية: إنه يجزيه عن الوضوء المأمور به للصلاة. وعن التيمم المأمور به للصلاة، وعن الصيام المأمور

[1] **Translator’s note (L2211):** The Qur’anic quotations repeatedly omit the initial alif in words such as “Allah” and in the definite article. The translation follows their recoverable sense. In the first quotation, “the upright religion” renders the conventional sense of the recognizable wording from 98:5; the supplied spelling is defective.

[2] **Qur’an references (L2211):** Qur’an 4:114 (An-Nisa); Qur’an 11:31 (Hud); Qur’an 48:18 (Al-Fath); Qur’an 22:46 (Al-Hajj).

look at your outward forms and your wealth; rather, He looks at your hearts and your actions."

Abu Muhammed said: Thus, everything we have mentioned establishes that it is the soul that is commanded to perform actions, and that the body is its instrument. If, through the action in which it directs the body, the soul intends some particular purpose, it has nothing other than that. It is also established that Allah Most High accepts only what He has commanded, performed with exclusive devotion to Him. Consequently, any action through which the purpose commanded by Allah Most High was not intended cannot stand in place of what Allah Most High commanded. Thus invalid is the statement of anyone who says that, if someone performs ablution to cool himself or to teach, performs dry ablution without an intention, refrains from eating, drinking, and intercourse without an intention, or walks through the pilgrimage rites without an intention, this suffices for the ablution commanded for prayer, the dry ablution commanded for prayer, the fasting commanded or voluntarily undertaken for Allah, Mighty and Majestic, or the pilgrimage commanded or voluntarily undertaken for Allah Mighty and Majestic, because in all of that he did not devote himself exclusively to Allah, Mighty and Majestic, nor did he do it seeking His good pleasure, exalted is He, nor did he intend by it what he was commanded to do. And it has been declared by Allah Most High, through the tongue of His Prophet, peace be upon him, that He does not look at outward forms. Since He does not look at outward forms, it is invalid for the action of the outward form alone to suffice in place of the action of the heart, which is intention. It is established that He Most High looks only at the heart and what is intended through it. There is no clearer demonstration than Allah's, Mighty and Majestic, declaring false the hypocrites in their testimony that Muhammed is the Messenger of Allah. This is the very essence and substance of truth, without which no truth is complete. Yet, because they did not intend that statement in their hearts, they became liars in making it. This plainly demonstrates the invalidity of every statement and action not intended in the heart. We recount the statements of the unbelievers and recite them in the Quran, but, since we do not intend them in our hearts, that does us no harm whatsoever. The explicit wording

به، أو المتطوع به لله عز وجل، وعن الحج المأمور به، أو المتطوع به لله عز وجل، لأنه لم يخلص في كل ذلك لله عز وجل، ولا فعله ابتغاء مرضاته تعالى، ولا نوى به ما أمر به. وقد أخبر الله تعالى على لسان نبيه عليه السلام أنه لا ينظر إلى الصور، فإذا لم ينظر إلى الصور فقد بطل أن يجزي عمل الصورة المنفرد على عمل القلب الذي هو النية، وصح أنه تعالى إنما ينظر إلى القلب وما قصد به فقط، ولا بيان أكثر من تكذيب الله عز وجل لمنافقين في شهادتهم أن محمدا رسول الله. وهذا عين الحق وعنصره الذي لا يتم حق إلا به، فلما كانوا غير ناوين لذلك القول بقلوبهم صاروا كاذبين فيه، وهذا بيان جلي في بطلان كل قول وعمل لم ينو بالقلب، ونحن نحكي أقوال الكفار ونتلوها في القرآن، ولكنا لم ننوها بقلوبنا لم يضرنا ذلك شيئا وصح بنص الحديث على رسول الله صلى الله عليه وسلم أن التقوى في القلب فكل عمل لم يقصده القلب فليس تقوى، وكل عمل لم يقصد بالمضغة التي بها يصلح الجسد فهو باطل، وإن عمله الجسد، وفي هذا كفاية. على أن القائلين بخلاف قولنا يتناقضون أقبح تناقض، فمن مفرق بين التيمم والوضوء، ومن مفرق في النية في الصوم بين أول النهار وآخره، ومن مفرق في الحج بين الإحرام وبين سائر فرائضه، كل ذلك استطالة في الدين بالآراء الفاسدة والأهواء المضلة بلا دليل من الله تعالى، فإن قال قائل منهم: إنما أمر الله تعالى بغسل أعضاء الوضوء فغاسلها، وإن لم تكن له نية قد غسلها، قيل له وبالله تعالى التوفيق: ما أمر الله تعالى قط بغسلها مجردا عن النية بذلك للصلاة وبيان ذلك في الآيتين اللتين ذكرنا. وفي الحديثين اللذين نصصنا وأيضا: فإن الصلاة حركات من وقوف وانحناء ووضع رأس بالأرض، فإن فعل ذلك إنسان متمددا ومتأملا شيئا بين يديه ومستريحا، حتى أتم بذلك ركعتين في وقت صلاة الصبح لا ينوي بذلك صلاة الصبح أتروه يجزيه ذلك من صلاة الصبح المفترضة عليه؟ وهذا ما لا يقولونه

of the report from the Messenger of Allah, may Allah bless him and grant him peace ﷺ, establishes that godfearingness is in the heart. Thus, every action that the heart does not intend is not godfearingness, and every action not intended by the morsel of flesh through which the body becomes sound is invalid, even if the body performs it. This is sufficient.

Moreover, those who maintain a position contrary to ours contradict themselves most disgracefully. Some distinguish between dry ablution and ablution; some distinguish, regarding the intention for fasting, between the beginning of the day and its end; and some distinguish, regarding pilgrimage, between entering the state of consecration and its other obligatory rites. All of this is overreaching in religion through corrupt opinions and misleading desires, without evidence from Allah Most High.

If one of them says, "Allah Most High only commanded the washing of the bodily members involved in ablution, so someone who washes them has washed them, even if he has no intention," he is told—and success comes through Allah Most High: Allah Most High never commanded washing them devoid of an intention to do so for prayer. The explanation of this is in the two verses we have mentioned and the two reports we have quoted explicitly. Furthermore, prayer consists of movements: standing, bending, and placing one's head on the ground. If a person does that while stretching, examining something in front of him, and resting, until he has thereby completed two units of prayer during the time of the dawn prayer, without intending the

dawn prayer by it, do you consider that this suffices for the dawn prayer obligatory upon him? This is something they do not maintain.[3][4][5][6]

L2217–2221 They have therefore fallen into contradiction. If, concerning fasting, they appeal to what is reported, that he, may Allah bless him and grant him peace ﷺ, used to enter Aʿishah's presence and say, "Do you have any food?" and, if she said no, would say, "I am fasting," they are told—and success comes through Allah Most High: You have no proof in this, because it contains no explicit statement that he, may Allah bless him and grant him peace ﷺ, began the fast anew at that moment. It is possible that he, may Allah bless him and grant him peace ﷺ, asked, "Do you have any food?" when he had already intended to fast, so that, had he found food, he would have broken his fast with it and discontinued the fast. This accords with what is reported through Aʿishah, that she brought food close to him, whereupon he ate and said, may Allah bless him and grant him peace ﷺ, "I had begun the morning fasting." This is permissible for us as well. As for an action without an intention, there is no way to allow it, for the reasons we have previously set out. If they say, "But you permit washing away ritual impurity without an intention," the answer—and success comes through Allah Most High—is that every ritual impurity whose removal the Messenger of Allah, may Allah bless him and grant him peace ﷺ, commanded through a specified action and a fixed number of repetitions must be removed with an intention, and its removal suffices only when one intends thereby to perform the action commanded in its regard; otherwise, it does not. As for every ritual impurity that we have merely been commanded to avoid, without an action

فقد حصلوا على التناقض فإن احتجوا في الصيام بما روي أنه صلى الله عليه وسلم كان يدخل على عائشة فيقول أعندكم طعام فإن قالت: لا. قال: إني صائم قيل لهم وبالله تعالى التوفيق لا حجة لكم في ذلك لأنه ليس فيه نص على أنه صلى الله عليه وسلم استأنف الصوم من حينئذ وجائز أن يكون صلى الله عليه وسلم سأل هل عندكم طعام وهو قد نوى الصيام فلو وجد طعاما أفطر عليه وترك الصوم، كما روى من طريق عائشة أنها قربت إليه طعاما فأكل وقال صلى الله عليه وسلم إني كنت أصبحت صائما وهذا جائز لنا نحن أيضا، وأما عمل بلا نية فلا سبيل إليه، لما قدمنا قبل. فإن قالوا: فإنكم تجيزون غسل النجاسة بلا نية؟ فالجواب وبالله تعالى التوفيق إن كل نجاسة أمر رسول الله صلى الله عليه وسلم بإزالتها بعمل موصوف وبعدد محدود فلا بد في إزالتها من النية، ولا تجزى إلا بالقصد إليه تأدية العمل المأمور به فيها، وإلا فلا، وأما كل نجاسة أمرنا باجتنابها فقط، دون أن يجد لنا فيها عمل أو عدد فكيف ما زالت فقد زالت وقد اجتنبناها، وأيضا فإنه لولا الإجماع ما أجزنا ذلك ههنا. وأيضا فإن لباس الثوب النجس حلال إلا في الصلاة وفرض الصلاة، أن يصلي قاصدا بنيته إلى لباس وثياب طاهرة عنده لا نجاسة فيه، فإذا صلى في ثوب هذه صفته، ناويا لذلك فقد أدى فرضه كما أمر بالنية التي أمر بها، وليس غسلها فرضا، لا يجزي سواه، بل لو قطعها أو انقطع موضعها من ثوبه، أو لبس ثوبا آخر أجزأه، فحسبنا أن يكون الثوب طاهرا لا نجاسة فيه، ولا نبالي كيف زالت النجاسة عنه، ولا فرق بين إجازة مالك النية للصوم لرمضان في أول ليلة منه، ويجزي ذلك عنده من تحديد النية كل ليلة، وبين إجازة أبي حنيفة إحداث النية لصيام كل يوم من رمضان قبل زوال الشمس وإن لم ينوه من الليل، ولا فرق بين تقديم النية قبل وقت العمل، وبين تأخيرها عن

[3] **Translator's note (L2213):** The supplied transmitter's name is جعفر بن برفان, rendered here as Jaʿfar ibn Barfan; the apparent intended name is Jaʿfar ibn Burqan, but the supplied reading has not been silently corrected.

[4] **Translator's note (L2215):** The phrase المنفرد على عمل القلب is awkward. It is rendered according to the apparent argument: an outward bodily action alone cannot suffice in place of the heart's act of intention.

[5] **Translator's note (L2216):** The opening لمنافقين appears defective in the supplied transcription; the context plainly identifies the hypocrites as those whom Allah declares false. The statement about the hypocrites alludes to Quran 63:1 without directly quoting the whole verse.

[6] **Hadith references (L2213):** Sahih Muslim 2564c.

or a number being prescribed for us in its regard, however it disappears, it has disappeared, and we have avoided it. Furthermore, were it not for consensus, we would not have permitted that here. Moreover, wearing an impure garment is lawful except during prayer. What is obligatory in prayer is that one pray with the intention of wearing clothing and garments that are pure in one's judgment, containing no impurity. If one prays in a garment of this description, intending that, one has discharged one's obligation as commanded, with the intention one was commanded to have. Washing the impurity away is not an obligation for which nothing else suffices. Rather, if one cut it away, if its location were severed from one's garment, or if one wore another garment, that would suffice. It is therefore sufficient for us that the garment be pure, containing no impurity, and we do not concern ourselves with how the impurity disappeared from it.

There is no difference between Malik's allowing the intention to fast Ramadan to be made on its first night, which in his view suffices in place of specifying the intention each night, and Abu Hanifah's allowing the intention to fast each day of Ramadan to be newly formed before the sun passes its zenith, even if one did not intend it during the night. Nor is there any difference between advancing the intention before the time of the action and delaying it beyond the time of the action. In both cases, the commanded action is performed without an intention accompanying it. No action may be performed except with a preceding intention immediately connected with entering upon it, with that intention present and without any interval; beginning the action must not be devoid of it. If this were possible in fasting, such that the intention were immediately connected with the break of dawn, nothing else would suffice. But, since that is not possible on every occasion, it suffices according to one's capacity. This is alongside the report transmitted on this subject through Hafsah: "There is no fasting for one who has not resolved upon it during the night." And success comes through Allah Most High.

Every action must have an intention. Everything a person does necessarily falls into one of two categories: either movement or refraining from movement. Only intentions distinguish obedience in these two categories

وقت العمل، وفي كلا الوجهين يحصل العمل المأمور به مؤدى بلا نية مصاحبة له، ولا يجوز أن يؤدى عمل إلا بنية متقدمة، يتصل بها ومعها الدخول فيه بلا مهلة، ولا يعرى الابتداء به منها. ولو أمكن ذلك في الصوم حتى تكون النية متصلة بطلوع الفجر لما أجزأ غير ذلك، ولكن لما كان ذلك غير ممكن في كل وقت، أجزأ ذلك على قدر الطاقة هذا مع الحديث الوارد في هذا المعنى من طريق حفصة: لا صيام لمن لم يبيته من الليل وبالله تعالى التوفيق. ولا بد لكل عمل من نية، وكل شيء يتصرف فيه المرء فلا يخلو من أحد وجهين: إما حركة، وإما إمساك عن حركة، وإنما يفرق بين الطاعة من هذين الوجهين وبين المعصية منهما وبين اللغو منهما النيات فقط، ولا فرق بين الطاعة والمعصية واللغو في الحركات والإمساك عن الحركات إلا بالنيات فقط، وإلا فكل واحد فهو إما واقع تحت جنس الحركة وإما واقع تحت جنس الإمساك عن الحركة. فوجب بالضرورة أن لا يتم عمل، ولا يصح أن يكون حركة أو إمساك متوجهين إلى الطاعة المأمور بها. خارجين عن المعصية وعن اللغو إلا بنية. هذا أمر لا محيد عنه أصلا إلا لجاهل لا معرفة له بحقائق الأمور.

from disobedience in them and from purposeless activity in them. There is no distinction between obedience, disobedience, and purposeless activity in movements and in refraining from movements except through intentions alone. Otherwise, each instance falls either within the genus of movement or within the genus of refraining from movement. It therefore follows necessarily that no action is complete, and no movement or refraining can validly be directed toward the commanded obedience and free of disobedience and idle activity, except through an intention. This is a matter from which there is absolutely no escape, except for an ignorant person who has no knowledge of the realities of things.[7][8]

L2222–2224 Thus, whoever prays with the intention of showing off is an evildoer and disobedient; whoever prays with the intention of the obedience he has been commanded to perform is obedient and virtuous. Whoever bows, prostrates, stands, and sits with neither an intention of showing off nor an intention of obedience engages in idle activity and is neither obedient nor disobedient. Whoever performs ablution with the intention of showing off is an evildoer and disobedient; whoever performs ablution with the intention of obedience, as commanded, is obedient and virtuous. Whoever washes his limbs to cool himself, without an intention of obedience or an intention of showing off, is neither obedient nor disobedient. If he is not obedient, then he has not performed the ablution that constitutes obedience to Allah, Mighty and Majestic, and is commanded. The same applies to fasting, pilgrimage, striving in Allah's cause, and obligatory almsgiving. For fasting consists only in abstaining from eating, drinking, sexual intercourse, vomiting, lying, backbiting, and

فمن صلى بنية رياء ففاسق عاص، ومن صلى بنية الطاعة التي أمر بها فمطيع فاضل، ومن ركع وسجد وقام وقعد لا بنية رياء ولا بنية الطاعة فذلك لغو، وليس مطيعا ولا عاصيا، ومن توضأ بنية الرياء ففاسق عاص، ومن توضأ بنية الطاعة كما أمر فمطيع فاضل، ومن غسل أعضاءه تبردا بلا نية طاعة ولا بنية رياء فليس مطيعا ولا عاصيا، وإذا لم يكن مطيعا فلم توضأ الوضوء الذي هو طاعة الله عز وجل مأمور به. وكذلك الصوم والحج والجهاد والزكاة، لأن الصوم إنما هو إمساك عن الأكل والشرب، والوطء، والقيء، والكذب والغيبة، ومباشرة من لا يحل للمرء مباشرته، فإن أمسك عن كل ذلك بنية الرياء فهو عاص لله عز وجل فاسق غير صائم، وإن أمسك عن كل ذلك بنية الطاعة في تركه كما أمر فهو مطيع فاضل صائم. وإن أمسك عن كل ذلك لا بنية الرياء ولا بنية الطاعة كما أمر، فليس مطيعا ولا عاصيا، وإذا لم يكن كذلك فليس صائما، وإذا لم يمسك بنية الطاعة عن ذلك في صوم الفرض في الوقت الذي أمر فيه بالإمساك عن كل ما ذكرنا فهو عاص، لأنه خالف ما أمر به وهكذا القول في رمي الجمار والوقوف بعرفة والمزدلفة والطواف والسعي. وكذلك سائر الأشياء كلها. فمن أكل الشعير مؤثرا بالبر المساكين، ناويا للبر في ذلك، ففاضل محمود، ومن أكله لؤما وبخلا وخزن البر مستكثرا للمال. فمذموم آثم، ومن مشى راجلا

[7] **Translator's note (L2219):** The supplied يجد لنا فيها عمل أو عدد is grammatically awkward and appears to have a defective verb. The translation gives the apparent contextual meaning, that no action or number is prescribed. The phrase لباس وثياب طاهرة عنده لا نجاسة فيه shifts awkwardly between expressions for clothing and singular reference; its repetition and the qualification عنده, "in one's judgment," are retained. The supplied تحديد النية means specifying or determining the intention; it has not been silently changed to تجديد النية, "renewing the intention."

[8] **Translator's note (L2221):** The opening continues the preceding sentence. The Arabic uses plural participles, although the preceding grammatical subjects are singular; the translation preserves the sense without silently supplying a new subject.

bodily contact with someone with whom such contact is unlawful. If he abstains from all of that with the intention of showing off, he is disobedient to Allah, Mighty and Majestic, an evildoer, and not fasting. If he abstains from all of that with the intention of obedience in refraining from it, as commanded, he is obedient, virtuous, and fasting. If he abstains from all of that with neither an intention of showing off nor an intention of obedience as commanded, he is neither obedient nor disobedient. If that is his condition, he is not fasting. If, during an obligatory fast, he does not abstain from that with the intention of obedience at the time when he has been commanded to abstain from everything we have mentioned, he is disobedient, because he has contravened what he was commanded to do. The same applies to casting the pebbles, standing at ʿArafah and Muzdalifah, circumambulation, and the ritual passage between al-Ṣafā and al-Marwah. The same applies to all other things. Whoever eats barley, giving the poor preference over himself with respect to wheat and intending righteousness thereby, is virtuous and praiseworthy. Whoever eats it out of meanness and miserliness, and stores up wheat to accumulate wealth, is blameworthy and sinful. Whoever travels on foot and carries his belongings in his own hand out of humility before Allah Most High, rather than miserliness or baseness, while also keeping himself above ignoble acts, and gives charity, intending through all of this what we have mentioned, is virtuous and praiseworthy. Whoever does that out of miserliness and baseness is blameworthy; if he does it with the intention of showing off, he is an evildoer. Whoever marries his daughter to his slave or to a non-Arab man, as Ḍirār ibn ʿAmr did, out of humility and with the intention of treating Muslims equally, while retaining his self-respect and being neither covetous nor greedy, is virtuous and praiseworthy in the eyes of people of reason, disciplining the irascible faculty of his soul. Whoever does that out of covetousness or abjectness of soul is blameworthy and contemptible. Whoever wears fine patterned cloth that is not silk, intending to follow the example of the Prophet—may Allah bless him and grant him peace ﷺ—is rewarded and virtuous. Whoever wears it with the intention of effeminacy, insolent self-indulgence, and self-admiration is an evildoer and blameworthy. So it is with all deeds, from first to last. It is therefore estab-

وحمل متاعه بيده، تواضعا لله تعالى لا بخلا ولا دناءة، وتصاون عن الخسائس مع ذلك، وتصدق ناويا بكل ذلك ما ذكرنا، فهو فاضل محمود، ومن فعل ذلك بخلا ودناءة فمذموم، وإن فعل بنية رياء ففاسق، ومن أنكح بنته عبده أو علجا كما فعل ضرار بن عمرو تواضعا ونيته التسوية بين المسلمين، وهو مع ذلك عزيز النفس غير طمع ولا جشع ففاضل محمود عند أهل العقول، رائض لنفسه الغضبية، ومن فعل ذلك طمعا أو مهانة نفس فمذموم ساقط، ومن لبس الوشي المرتفع الذي ليس حريرا بنية الاقتداء بالنبي صلى الله عليه وسلم فمأجور فاضل ومن لبسه بنية التخنث والأشر والإعجاب ففاسق مذموم، وهكذا جميع الأعمال، أولها عن آخرها، فصح أن لا عمل أصلا إلا بنية كما ذكرنا، وبالله تعالى التوفيق.

lished that there is absolutely no deed except with an intention, as we have mentioned. Success comes through Allah Most High.[9]

L2225–2233 If someone says: "You say of someone who inwardly emancipates his female slave or his male slave, intends their emancipation, and resolves upon it with a valid intention, but does not verbally pronounce their emancipation, that they do not thereby become free, and that he is not someone who has emancipated them, either before Allah or in judicial judgment; rather, the male slave and female slave remain his property as before. You also say of someone who inwardly divorces and intends divorce, but does not utter any expression of divorce, that he does not thereby become someone who has divorced, either before Allah or in judicial judgment; rather, his wife remains lawful to him as before. You even say that if he utters an expression that is not one of the expressions of divorce, intending divorce by it, no divorce becomes binding upon him thereby, and she remains his wife as before, lawful to him both in judicial judgment and in legal opinion. You say that someone who gives by his intention, or by his intention gives in charity, a specified portion of his property, but does not utter any expression of gift or charity, is thereby neither a giver nor a giver of charity, and nothing becomes binding upon him, either in legal opinion or in adjudication, even if he acknowledges this and admits that he intended it. Yet you then say that someone who, while fasting, intends to abandon the fast, deliberately doing so while remembering his fast, although he neither eats nor drinks nor has intercourse nor performs any act that invalidates fasting, has invalidated his fast and broken it. You say of someone who, while praying, intends to abandon the prayer and leave it, although he has not departed from the posture of prayer in which he is engaged, that his prayer has become invalid if he does this deliberately while remembering that he is praying. You say of someone who, while giving the obligatory alms on his property, intends that this should not count toward the obligatory alms incumbent upon him, that he has thereby failed to discharge his obligation of almsgiving and

فإن قال قائل: أنتم تقولون فيمن أعتق في نفسه أمته أو عبده، ونوى عتقهما وأمضاه نية صحيحة، إلا أنه لم يلفظ بعتقهما أنهما لا يكونان بذلك حرين، ولا يكون هو معتقا لا عند الله ولا في الحكم، فإن العبد والأمة باقيان مملوكين له كما كانا. وتقولون فيمن طلق في نفسه، ونوى الطلاق إلا أنه لم يلفظ بلفظ من ألفاظ الطلاق: إنه لا يكون مطلقا بذلك لا عند الله ولا في الحكم، وإنما امرأته حلال له كما كانت، حتى أنكم تقولون: إنه إن لفظ بلفظ ليس من ألفاظ الطلاق ونوى به الطلاق، إنه لا يلزمه بذلك طلاق وإنها امرأته كما كانت حلال له في الحكم والفتيا معا. وتقولون: إن من وهب نيته أو تصدق بنيته بشيء من ماله مسمى، ولكنه لم يلفظ بلفظ من ألفاظ الهبة أو الصدقة إنه بذلك غير واهب ولا متصدق، ولا يلزمه شيء، لا في الفتيا ولا في القضاء، وإن اعترف بذلك وأقر بأنه نواه. ثم تقولون: إن من نوى في حال صيامه أنه تارك للصوم عامدا بذلك، ذاكرا لصومه، إلا أنه لم يأكل ولم يشرب ولا وطىء ولا فعل فعلا ينقض الصوم، فإن صومه قد بطل، وأنه قد أفطر، وتقولون فيمن نوى في حال صلاته: إنه تارك الصلاة خارج عنها، إلا أنه لم يفارق ما هو فيه من هيئتها أنه قد بطلت صلاته إذا تعمد ذلك وهو ذاكر أنه في صلاة، وتقولون فيمن نوى في حال إعطائه زكاة ماله أنه ليس ذلك عن زكاته المفترضة عليه، إنه كذلك غير مؤد فرض زكاته وأن عليه أداءها ثانية. وتقولون فيمن نوى في حال تذكيته ما يذكي: أنه عابث غير قاصد إلى التذكية المأمور بها، إنها ميتة لا يحل أكلها، وتقولون فيمن نوى في حال عمرته وحجه إنه رافض لهما، وهو مع ذلك متماد في عملهما، فإن حجه وعمرته قد بطلا، وتقولون فيمن نوى في حال وضوئه وغسله، إن بعض عمله لهما لا ينوي به أداء الغسل الوضوء المفترضين عليه: إن ذلك الغسل والوضوء ناقصان، لا بد من إعادة ما عمل بغير نية. وتقولون فيمن أتم كل هذه الأعمال بنية لها فلما أتمها

[9] **Translator's note (L2223):** ʿIlj, rendered here as "non-Arab man," can carry derogatory connotations and can also denote a non-Muslim foreigner; the precise intended scope is uncertain here.

must discharge it a second time. You say of someone who, while ritually slaughtering an animal, intends merely to amuse himself, without intending the commanded ritual slaughter, that it is carrion and unlawful to eat. You say of someone who, during his lesser pilgrimage and pilgrimage, intends to abandon them, while nevertheless continuing to perform their rites, that his pilgrimage and lesser pilgrimage have become invalid. You say of someone who, during his ablution and full ritual washing, does not intend, in some part of his performance of them, to discharge the full ritual washing and ablution incumbent upon him, that this full ritual washing and ablution are incomplete, and that whatever he performed without an intention must be repeated. You say of someone who completes all these deeds with an intention for them, then, after completing them, intends their invalidation, that none of them becomes invalid thereby, and that they remain effective, sufficient, and valid. What, then, is the difference between what you have deemed valid and what you have invalidated among these things? Are they not all alike? What is the difference between intention's having no need, in some of these cases, for an act to accompany it, and its needing an act to accompany it in others?" The answer—and success comes through Allah Most High—is that all commanded deeds require an intention accompanying them, as we stated earlier, because of what we mentioned at the beginning of this chapter concerning the obligation to direct one's purpose toward Allah Most High and to devote one's deed sincerely to Him. Whenever a person intends to invalidate that intention, that deed becomes invalid, since he has not performed it as commanded, with the intention accompanying it. For this reason, the ablution, full ritual washing, fasting, and pilgrimage we mentioned become invalid. For one is only either fasting or not fasting, praying or not praying, performing ablution or not performing ablution. The same applies to obligatory almsgiving, pilgrimage, and other things. Thus, if he is not fasting, praying, or performing ablution as commanded, he is not fasting, not performing ablution, and not praying. The same applies to all other deeds. Likewise, our position concerning someone who divorces, emancipates, or gives charity without an intention is that none of this is binding upon him before Allah Most High, even though we adjudge it enforceable against him, because we do not know his intention in doing so. If we knew

نوى بطلانها: إنه لا يبطل شيء منها بذلك، وأنها ماضية جازية جائزة، فما الفرق بين ما جوزتموه وبين ما أبطلتموه من ذلك؟ وهل كل ذلك إلا سواء؟ وما الفرق بين استغناء النية في بعض هذه الوجوه عن مضامة العمل إليها، وبين افتقارها إلى مضامة العمل إليها في بعضها؟. فالجواب وبالله تعالى التوفيق: إن جميع الأعمال المأمور بها هي مفتقرة إلى نية تصحبها كما قدمنا لما ذكرنا في أول هذا الباب من وجوب القصد إلى الله تعالى والإخلاص له بالعمل، فمتى قصد المرء إلى إبطال تلك النية فقد بطل ذلك العمل، إذ لم يأت به كما أمر من إصحاب النية إياه، فلذلك بطل ما ذكرنا من الوضوء والغسل والصوم والحج، لأنه ليس إلا صائم أو غير صائم، أو مصل، أو غير مصل، ومتوضىء أو غير متوضىء. وهكذا في الزكاة والحج وغير ذلك، فإذا لم يكن صائما. ولا مصليا ولا متوضئا كما أمر، فهو غير صائم ولا متوضىء ولا مصل وهكذا، سائر الأعمال. وهكذا القول عندنا، فيمن طلق أو عتق أو تصدق بغير نية، إن كل ذلك لا يلزمه عند الله تعالى، وإن كنا نقضي عليه بإمضائه، لأنا لا نعلم نيته في ذلك، ولو علمنا أنه بغير نية لما حكمنا عليه بشيء من ذلك أصلا، فلو وصل قوله كله فقال: عبدي حر بغير نية مني لعتقه، أو قال ذلك في الطلاق والنكاح والصدقة والهبة، لما أنفذنا عليه شيئا من ذلك أصلا. وكل ما ذكرنا وما لم نذكر من سائر الأعمال، فلا تجزىء فيه النية دون العمل ولا العمل دون النية، ولا بد من اقترانهما معا، لأنه مأمور من الله تعالى بهما معا، فلا بد في الصلاة من حركات محدودة معمولة مع النية، ولا بد في الوضوء من مثل ذلك أيضا، ولا بد في الحج من مثل ذلك، ولا بد في الصوم من إمساك عن كل ما أمر بالإمساك عنه، مع النية أيضا، ولا بد في العتق والطلاق، والنكاح والهبة والصدقة، من نطق ولفظ مع النية في كل ذلك، لأنه لا يعلم شيء من ذلك إلا بالألفاظ المعبرة عنه، وإن انفرد في كل ما ذكرنا عمل دون نية فهو باطل، وإن انفرد نية فيه دون عمل فهي باطل أيضا. فمن نوى أن يصلي أو يتوضأ، أو

that it was without an intention, we would not adjudge any of that binding upon him at all. Thus, if he made his entire statement continuous and said, 'My slave is free, without any intention on my part to emancipate him,' or said that regarding divorce, marriage, charity, or a gift, we would enforce none of that against him at all. In everything we have mentioned, and every other deed we have not mentioned, intention does not suffice without action, nor action without intention. They must be joined together, because he is commanded by Allah Most High to perform both together. Thus, prayer necessarily requires specified movements performed with an intention; ablution likewise necessarily requires the same; pilgrimage necessarily requires the same; and fasting necessarily requires abstention from everything from which one is commanded to abstain, together with an intention as well. And emancipation and divorce necessarily require as do marriage, gifts, and charity, speech and verbal expression accompanied by an intention in all of this, because none of these things can be known except through the expressions that convey it. If, in anything we have mentioned, an act occurs alone without an intention, it is invalid; if an intention occurs alone in it without an act, it too is invalid. Thus, whoever intends to pray, perform ablution, undertake pilgrimage, or fast, but neither prays nor performs ablution nor undertakes pilgrimage nor fasts, has nothing to his credit. Let no one suppose that our position differs in any of what we have mentioned; rather, it all falls under one and the same category: both an act and an intention are indispensable; neither has legal effect without the other. Whoever disagrees with us on this contradicts himself: sometimes he adopts our position in certain cases, including prayer, and sometimes he does not adopt our position, without any proof, merely following personal inclination and the imitation of authorities that is impermissible. If someone says, "You say that someone who breaks his fast forgetfully, without remembering his fast; or speaks, acts, or eats forgetfully during his prayer, without remembering that he is praying; or kills game while in the state of consecration, without deliberately intending to kill it, incurs nothing in any of these cases. Yet you then say that someone who incurs ritual impurity through something issuing from either of his two bodily outlets—feces, urine, wind, pre-seminal fluid, post-urinary fluid, or semen—forgetfully, or falls asleep because sleep overcomes him, has had his

يحج أو يصوم ولم يصل ولا توضأ ولا حج ولا صام فلا شيء له، فلا يظن الظان أن قولنا اختلف في شيء مما ذكرنا، بل هو كله باب واحد، وهو أنه لا بد من عمل ونية، لا حكم لأحدهما دون الآخر، ومن خالفنا في هذا فإنه يتناقض، فمرة يقول بقولنا في بعض المواضع، ومنها الصلاة، ومرة لا يقول بقولنا دون دليل، لكن اتباعا للهوى والتقليد الذي لا يحل. فإن قال: فإنكم تقولون فيمن أفطر ناسيا غير ذاكر لصومه، أو تكلم أو عمل أو أكل ناسيا في صلاته غير ذاكر أنه في صلاة، أو قتل صيدا وهو محرم غير معتمد لقتله إنه لا شيء عليه في كل ذلك. ثم تقولون: من أحدث بشيء يخرج من مخرجيه من غائط أو بول أو ريح أو مذي أو ودي أو مني ناسيا، أو نام مغلوبا فقد بطلت طهارته وتقولون إن من ذبح أو نحر أو تصيد، فلم يسم الله تعالى ناسيا أو عامدا، فكلاهما سواء لا يحل أكل شيء من ذلك. فالجواب وبالله تعالى التوفيق: أن الأصل الذي تجري عليه الفتيا أنه لا شيء على الناس لقوله تعالى {دعوهم لآبآئهم هو أقسط عند الله فإن لم تعلموا آباءهم فإخوانكم في لدين ومواليكم وليس عليكم جناح فيمآ أخطأتم به ولكن ما تعمدت قلوبكم وكان الله غفورا رحيما} فلا يخرج عن هذا النص إلا ما أخرجه نص أو إجماع، فلهذا النص ولما أخبرنيه أبو العباس أحمد بن عمر العذري، أنا الحسين بن عبد الله الجرجاني، ثنا عبد الرزاق بن أحمد بن عبد الحميد الشيرازي، أخبرتنا فاطمة بنت الحسن بن الريان المخزومي وراق القاضي أبي بكار بن قتيبة قالت: ثنا الربيع بن سليمان المؤذن، ثنا بشر بن بكر عن الأوزاعي، عن عطاء، عن عبيد بن عمير عن ابن عباس قال قال رسول الله صلى الله عليه وسلم إن الله تجاوز عن أمتي الخطأ والنسيان وما استكرهوا عليه. ففي هذا الحديث نص التسوية بين العمل المقصود نسيانا بغير نية، وبين الخطأ الذي لم يقصد، فلهذا ولنصوص أخر لم يبطل الصوم بفطر نسيان، ولا بطلت الصلاة لعمل نسيان، وهكذا كل نسيان، إلا

ritual purity invalidated. And you say that someone who slaughters by cutting the throat, slaughters by piercing the base of the neck, or hunts, but does not mention Allah Most High, whether forgetfully or deliberately, is in the same position in either case: eating any of that is unlawful." The answer—and success comes through Allah Most High—is that the governing principle for issuing legal opinions is that people incur nothing, because of His saying, Most High: "Call them after their fathers; that is more equitable in Allah's sight. If you do not know their fathers, then they are your brothers in religion and your clients. There is no blame upon you for that in which you have erred, but only for what your hearts have deliberately intended. Allah is ever forgiving, merciful." Nothing is excluded from this text except what another text or consensus excludes. Thus, on account of this text and what Abu al-Abbas Ahmad ibn Umar al-Udhri related to me: al-Husayn ibn Abd Allah al-Jurjani informed us; Abd al-Razzaq ibn Ahmad ibn Abd al-Hamid al-Shirazi narrated to us; Fatimah bint al-Hasan ibn al-Rayyan al-Makhzumi, the copyist of Judge Abu Bakkar ibn Qutaybah, informed us, saying: al-Rabi ibn Sulayman, the caller to prayer, narrated to us; Bishr ibn Bakr narrated to us, from al-Awzaʿi, from Ata, from Ubayd ibn Umayr, from Ibn Abbas, who said: The Messenger of Allah ﷺ said, "Allah has pardoned my community for error, forgetfulness, and what they have been compelled to do." This report explicitly establishes equivalence between an act intentionally performed while forgetful, without the requisite intention, and an error that was not intended. For this reason, and because of other texts, a fast is not invalidated by breaking it forgetfully, nor is prayer invalidated by an act performed forgetfully. The same applies to every instance of forgetfulness except one that another text or consensus excludes from this text, as has been established by certain, conclusive consensus concerning the aforementioned

نسيانا استثناه من هذا النص نص آخر أو إجماع، كما صح من الإجماع المتيقن المقطوع به في الأحداث المذكورة أنها تنقض الطهارة على كل حال بالنسيان والعمد.

occurrences of ritual impurity: they invalidate ritual purity in every case, whether through forgetfulness or deliberate action.[10][11][12][13]

L2234–2236 We know by necessity that people have continually incurred ritual impurity every day since the time of the Messenger of Allah ﷺ, and all of them require ablution on account of it. It is therefore established that this is a consensus transmitted back to the Messenger of Allah ﷺ. The same applies to sleep, because it invariably occurs only when it overcomes a person, never through intention. Even if someone spent his entire life intending to sleep, he could not do so unless sleep overcame him. As for the other occurrences of ritual impurity concerning which there is no consensus, in our view they invalidate ritual purity only through intention and deliberate action, not through forgetfulness, such as touching women and touching the private parts. As for lawful slaughter, the text states that we must not eat anything over which Allah's name has not been mentioned. He said, Most High: "Do not eat of that over which Allah's name has not been mentioned, for it is indeed wickedness. The devils do indeed inspire their allies to dispute with you; and if you obey them, you are indeed associators of partners with Allah." And He said, Most High: "They ask you what has been made lawful for them. Say: Lawful for you are wholesome things, and what you have trained of hunting animals, as trainers of hunting animals, teaching them from what Allah has taught you. So eat of what they catch for you, and mention Allah's name over it. Fear Allah; Allah is swift in reckoning." Since what people

وبالضرورة ندري أنه لم يزل الناس يحدثون في كل يوم من عهد رسول الله صلى الله عليه وسلم وكلهم يوجب الوضوء من ذلك فصح أنه إجماع منقول إلى رسول الله صلى الله عليه وسلم وكذلك النوم لأنه لا يكون إلا بغلبة أبدا لا بقصد، ولو قصد المرء دهره كله أن ينام لم يقدر إلا أن يغلبه النوم، وأما سائر الأحداث التي لا إجماع فيها فإنها لا تنقض الطهارة عندنا إلا بالقصد والعمد لا بالنسيان، كاللمس للنساء ومس الفرج. وأما الذكاة فإن النص ورد بألا نأكل مما لم يذكر اسم الله عليه قال تعالى {ولا تأكلوا مما لم يذكر سم لله عليه وإنه لفسق وإن لشياطين ليوحون إلى أوليآئهم ليجادلوكم وإن أطعتموهم إنكم لمشركون} وقال تعالى {يسألونك ماذآ أحل لهم قل أحل لكم لطيبات وما علمتم من لجوارح مكلبين تعلمونهن مما علمكم لله فكلوا مما أمسكن عليكم وذكروا سم لله عليه وتقوا لله إن لله سريع لحساب} فلما كان ما ذكاه الناس للتسمية مما لم يذكر اسم الله عليه بلا شك كان مما نهينا عن أكله بالنص، وأما الإثم فساقط عن الناسي جملة. وقد رام قوم أن يتوصلوا إلى إباحة ما نسي ذكر اسم الله عليه بقوله عز وجل في الآية المذكورة {ولا تأكلوا مما لم يذكر سم لله عليه وإنه لفسق وإن لشياطين ليوحون إلى أوليآئهم ليجادلوكم وإن أطعتموهم إنكم لمشركون} وقالوا: الفسق لا يقع إلا على النسيان. قال أبو محمد: وهذا تمويه ضعيف، لأننا لم نقل إن الله تعالى أوقع اسم الفسق على نسيان الناسي للتسمية، وإنما قلنا ما في نص الآية: إن ذلك الشيء المذبوح أو المنحور أو المتصيد الذي لم يسم الله تعالى عليه عمدا أو نسيانا هو نفسه المسمى فسقا، كما سمى الله تعالى الخمر والميسر رجسا من عمل الشيطان، فبطل تمويههم، وكان الناس لذكر اسم الله تعالى على التذكية غير مذك، وغير المذكى لا يحل أكله، وكذلك من نسي

[10] **Translator's note (L2226):** The wording "gives by his intention" follows the supplied وهب نيته, which appears to lack the preposition found in the parallel expression "gives in charity by his intention."

[11] **Translator's note (L2227):** The Arabic places "full ritual washing" and "ablution" together without a conjunction in the first occurrence; the translation supplies the connective required by the apparent sense.

[12] **Translator's note (L2232):** The opening continues the preceding segment; "category" is not a new chapter heading. The source reads "people incur nothing." In context, "the forgetful person incurs nothing" may have been intended, but that is not the transmitted wording. The relative "al-Makhzumi" and the designation "copyist" have masculine forms in the source, although they follow Fatimah's name and she subsequently speaks in the feminine.

[13] **Qur'an references (L2225):** Qur'an 33:5 (Al-Ahzab).

slaughtered for the invocation is unquestionably something over which Allah's name has not been mentioned, it falls within what the text forbids us to eat. As for sin, it is entirely waived for the forgetful person. Some people have sought to establish the permissibility of that over which mentioning Allah's name was forgotten by appealing to His saying, Mighty and Majestic, in the aforementioned verse: "Do not eat of that over which Allah's name has not been mentioned, for it is indeed wickedness. The devils do indeed inspire their allies to dispute with you; and if you obey them, you are indeed associators of partners with Allah." They said, "Wickedness applies only to forgetfulness." Abu Muhammed said: This is a feeble obfuscation, because we did not say that Allah Most High applied the designation "wickedness" to the forgetful person's forgetting the invocation. We said only what the verse explicitly states: that the very thing slaughtered by cutting the throat, slaughtered by piercing the base of the neck, or hunted, over which Allah Most High was not mentioned, deliberately or forgetfully, is itself what is designated "wickedness," just as Allah Most High designated wine and gambling "defilement from Satan's work." Their obfuscation is therefore invalid. The person who forgets to mention Allah Most High's name over the slaughter has not performed lawful slaughter, and eating what has not been lawfully slaughtered is impermissible. The same applies to someone who forgets to perform lawful slaughter and instead wrenches the neck apart, and likewise to someone who forgets the intention at the commencement of his prayer, at the commencement of his fast, or when paying his obligatory alms: none of these people has performed prayer, nor fasted, nor paid obligatory alms. Obligatory alms, however, are not tied to a period with two fixed endpoints, so they may always be made up. A text has established the obligation to make up prayer for someone who forgets. Fasting, however, is tied to a period with two fixed endpoints, and there is no way to transfer it except through another text. Likewise, as for the person performing lawful slaughter, it is only an act upon a particular thing that he cannot recover after its death. Since he did not mention Allah over it, through forgetfulness or deliberately, it is carrion, and eating it is impermissible. In the language, invoking the name applies

أن يذكي ففك الرقبة، وكذلك من نسي النية في مدخل صلاته ومدخل صومه ومدفع زكاته، فهؤلاء كلهم غير مصل ولا صائم ولا مزك، إلا أن الزكاة ليست مرتبطة بوقت محدود الطرفين فهي تقضى أبدا. وقد جاء النص بوجوب قضاء الصلاة على الناسي، وأما الصيام فهو مرتبط بوقت محدود الطرفين، فلا سبيل إلى نقله إلا بنص آخر، وكذلك المذكي إنما هو عمل في شيء بعينه، لا يقدر على استرجاعه بعد موته، فلما لم يسم الله عليه بنسيان أو عمد فهو ميتة لا يحل أكله، والتسمية في اللغة لا تقع إلا على ما ذكرنا باللسان لا على ما استقر في القلب دون ذكر باللسان.

only to what we have mentioned with the tongue, not to what is established in the heart without mention by the tongue.[14][15][16]

L2237 It is utterly astonishing that someone should require a person who breaks his fast forgetfully to make it up and refuse to excuse him, although the text establishes that he is fasting and that his fast is complete, and then consider it permissible to eat slaughtered animals and other things over which mentioning Allah Most High's name was forgotten, granting an excuse for forgetfulness here, where the text prohibits it in general terms. This is as you see, and success comes through Allah Most High. Likewise, someone who begins the act he has been commanded to perform with an intention directed toward it as commanded, then forgets the intention in the course of that act, while the act remains continuous and uninterrupted, does not have his act invalidated by forgetfulness, because of the text we have mentioned. Everything we have mentioned therefore invalidates the supposition that our statement that deliberately breaking the fast through an intention to break it, without eating, takes effect contradicts our statement that emancipation and divorce through intention without utterance do not take effect. Rather, it all belongs to one and the same category. Abstaining from what invalidates fasting without an intention directed thereby toward performing the fast is defective and invalid. Likewise, intending to fast without deliberately abstaining from what invalidates fasting is invalid and defective. Likewise, emancipation and divorce without an intention for them are invalid. Likewise, intending them without expressing them through that without which

والعجب كل العجب ممن يرى على المفطر ناسيا القضاء ولا يعذره، وقد جاء النص بأنه صائم تام الصوم، ثم يرى أكل ما نسي ذكر اسم الله تعالى عليه من المذبوحات وغيرها، ويعذر ههنا بالنسيان حيث عم النص بالمنع منه، وهذا كما ترى، وبالله تعالى التوفيق. وكذلك من افتتح العمل الذي أمر به بنية قصد إليه كما أمر، ثم نسي النية في درج ذلك العمل، وكان العمل متصلا غير منقطع، فهذا لا يبطل عمله بالنسيان للنص الذي ذكرنا، فبطل بكل ما ذكرنا ما ظنه الظان من أن قولنا: إن كون الفطر بنية الفطر عمدا في الصوم دون الأكل واقع أنه مخالف لقولنا: إن العتق والطلاق بالنية دون النطق غير واقعين، بل هو كله باب واحد، وذلك أن الإمساك عما ينقض الصوم بغير نية، قصد بذلك إلى أداء الصوم فاسد باطل. وكذلك نية الصوم دون الإمساك عما ينقض الصوم عمدا باطل فاسد. وكذلك العتق والطلاق دون نية لهما باطل، وكذلك النية لهما دون إظهارهما بما لا يكونان إلا به فاسدة باطل، ولاح أن الشك إنما وقع لمن وقع في هذا لاختلاف الأجوبة. وبيان تحقيق رفع الإشكال في هذا الباب هو أن يسأل السائل فيقول: ما تقولون فيمن طلق في نيته دون قول؟ وفيمن أعتق في نيته دون قول؟

[14] **Translator's note (L2234):** "What people slaughtered for the invocation" follows an apparently corrupt phrase. The argument requires something like "what someone slaughtered while forgetting the invocation," but the transmitted wording does not say this clearly. "Wickedness applies only to forgetfulness" reproduces the supplied wording. It appears to be a quotation error, since the objection and the ensuing rebuttal suggest that "wickedness does not apply to forgetfulness," or "applies only to deliberate action," was intended. In "the person who forgets to mention," the source reads "the people" where "the person who forgets" appears intended. The translation adopts that contextual reading explicitly here.

[15] **Translator's note (L2236):** The source has the active form "the person performing lawful slaughter," followed awkwardly by "it is only an act." This grammatical discontinuity is retained rather than silently changing the word to "slaughter."

[16] **Qur'an references (L2234):** Qur'an 6:121 (Al-An'am); Qur'an 5:4 (Al-Ma'idah).

they cannot take effect is defective and invalid. It has become clear that the doubt experienced by those who experienced it in this matter arose only from the differing answers. A precise explanation that removes the difficulty in this matter is for a questioner to ask, "What do you say about someone who divorces in his intention without speaking, and someone who emancipates in his intention without speaking,

L2238–2245 and someone who breaks his fast in his intention without performing an act that invalidates the fast, and someone who intends through his intention to invalidate the prayer in which he is engaged without performing an act contrary to prayer, or intends to cool himself during his ablution without incurring an occurrence of ritual impurity that invalidates ablution, doing all this deliberately and remembering the act in which he is engaged?" The answer—and success comes through Allah Most High—is that we say to him: None of those you have mentioned has effected emancipation or divorce, or has a valid fast, ablution, or prayer. Faith is similar, for it consists of utterance and intention. Whoever lacks the intention and utters faith has faith; whoever lacks the utterance and intends faith has no faith. If he has no faith, he is an unbeliever, because there is only a believer or an unbeliever. As for someone who completes the act he has been commanded to perform as he was commanded, in both act and intention, and then, after its conclusion, intends to undo and invalidate it, that act is not undone, because it has been completed and discharged as Allah Most High commanded, and its time has elapsed; thus a newly formed intention does not undo it. Likewise, an intention that does not accompany a defective act, whether preceding or following it, does not render that act valid. And we have We have established demonstrations that whatever was valid at one time does not become invalid at a subsequent time except through a text or consensus, and whatever was invalid at one time does not become valid at a subsequent time except through a text or consensus. This applies to someone who divorces by an intention or emancipates by his intention without an utterance: ownership and marriage were initially valid, so they do not subsequently become invalid except through a text. There is neither a text nor consensus establishing their invalidation through intention without the expressions designated for

وفيمن أفطر في نيته دون عمل يفسد به الصوم؟ وفيمن نوى إبطال صلاته التي هو فيها بنيته دون عمل مضاد للصلاة، أو نوى تبردا في خلال وضوئه ولم يحدث حدثا ينقض الوضوء، وفعل كل ذلك عامدا ذاكرا لما هو فيه؟. فالجواب وبالله تعالى التوفيق أن نقول له: كل من ذكرت لا عتق له ولا طلاق له ولا صوم له، ولا وضوء له، ولا صلاة له، ومثل هذا الإيمان فإنه قول ونية فمن عدم النية ولفظ بالإيمان فهو إيمان له، ومن عدم القول ونوى بالإيمان فلا إيمان له، وإذا كان لا إيمان له فهو كافر، لأنه ليس إلا مؤمن أو كافر، وأما من أتم العمل الذي أمر به كما أمر به، من عمل ونية ثم نوى بعد انقضائه نقضه وإبطاله، لم يكن ذلك العمل منتقضا، لأنه قد كمل وتأدى كما أمر الله تعالى، وانقضى وقته فلا ينقضه نية مستأنفة. وكذلك لا تصلح العمل الفاسد نية غير مضامة له، إما متقدمة وإما متأخرة، وقد أقمنا البراهين على أن كل ما صح في وقت لم يبطل في ثان إلا بنص أو إجماع وما بطل في وقت لم يصح في ثان إلا بنص أو إجماع، وهذا القول فيمن طلق بنية وأعتق بنيته دون لفظ: إن الملك والنكاح قد صحا في أول فلا يبطلان في ثان إلا بنص، ولا نص ولا إجماع في بطلانهما بالنية دون الألفاظ الموضوعة لنقضهما، وبطل بما ذكرنا قول من أراد أن يحقق جواز العمل بنية متقدمة له غير متصلة به، لأنه لو جاز أن يكون بين النية والعمل دقيقة لجاز أن يكون بينهما مائة عام ولا فرق. وقد قال المالكيون: إن في أول ليلة من شهر رمضان تجزىء النية لصيام باقيه، وهذا باطل، لأنه لو جاز ذلك لأجزت نية واحدة في أول رمضان يصومه المرء عن إحداث نية لكل رمضان يأتي، وهم لا يقولون ذلك، فإن قالوا: إنه

يحول بين رمضان ورمضان شهور لا صيام فيها، قيل لهم: وكذلك يحول بين كل يومين من أيام رمضان ليل لا صيام فيه، ولكل يوم حكمه، وقد يمرض ويسافر فيفطر ولا يبطل لذلك صيام ما سلف. ومن قولهم: إن انتقاض صيام يوم من رمضان بطاعة أو بمعصية لا ينقض صيام ما سلف فيه، وهذا هدم لقولهم، فإن ادعوا في ذلك إجماعا أكذبهم سعيد بن المسيب عميد أهل المدينة، لأنه يقول: من أفطر في رمضان يوما عمدا فعليه قضاء الشهر كله، لأنه عنده كيوم واحد وكصلاة واحدة، إن انتقضت منها ركعة تعمدا انتقضت كلها، فاستبان بكل ما ذكرنا أن كل هذا نوع واحد لا خلاف بين شيء منه، ولم نقل هذا على أننا حاكمون لبعض ما ذكرنا بمثل حكمنا لسائره، قياسا، ومعاذ الله من ذلك. ولكنا أرينا أصحاب القياس تناقضهم في ذلك، حيث يرتضونه ويصححونه ويحكمون به من القياس الفاسد. وأما نحن فإنما معتمدنا في كل ما ذكرنا على ما قد بيناه من أن كل عمل خلا من نية، أو كل نية خلت من عمل، فكل ذلك فاسد لقوله تعالى {ومآ أمروا إلا ليعبدوا الله مخلصين له لدين حنفآء ويقيموا لصلاة ويؤتوا لزكاة وذلك دين لقيمة} فأمرنا بشيئين كما ترى العبادة وهي العمل، والإخلاص وهو النية، فلا يجزىء أحدهما دون الآخر، وبقوله عليه السلام: إنما الأعمال بالنيات ولكل امرىء ما نوى فصح بهذا النص أنه لا عمل إلا بنية مقترنة معه غير متقدمة ولا متأخرة وقوله تعالى {دعوهم لآبآئهم هو أقسط عند الله فإن لم تعلموا آباءهم فإخوانكم في لدين ومواليكم وليس عليكم جناح فيمآ أخطأتم به ولكن ما تعمدت قلوبكم وكان الله غفورا رحيما} إلا أن يأتي نص باستثناء شيء من هذه النصوص فنصير إليه وإلا فلا. وقد سألني بعضهم فقال: ما تقول فيمن أفطر ناسيا لصومه؟ فقلت له: صومه تام. قال: فما تقول فيمن ترك ركعة من صلاته ناسيا؟ فقلت: يصليها ما لم ينتقض وضوءه، أو يعيد الصلاة كلها إن انتقض وضوءه، فقال لي: لم فرقت بين الأمرين؟ وهلا أجزت الصلاة مع نسيان بعضها، كما أجزت الصيام

dissolving them. What we have mentioned also invalidates the position of anyone who seeks to establish the permissibility of acting upon an intention that precedes the act without being connected to it. For if a minute could permissibly intervene between intention and action, a hundred years could permissibly intervene between them, with no difference. The Malikis have said that an intention on the first night of the month of Ramadan suffices for fasting the remainder of it. This is invalid, because if that were permissible, a single intention at the beginning of the first Ramadan a person fasts would suffice in place of forming a new intention for every subsequent Ramadan. Yet they do not maintain this. If they say, "Between one Ramadan and the next there intervene months during which there is no fasting," they are told: "Likewise, between every two days of Ramadan there intervenes a night during which there is no fasting, and each day has its own ruling." And he may become ill or travel and consequently break his fast, without this invalidating his previous fasting. They themselves maintain that the invalidation of one day's fasting in Ramadan, through an act of obedience or an act of disobedience, does not invalidate the preceding fasting in that month. This demolishes their position. If they claim consensus on this, Saʿid ibn al-Musayyab, the foremost authority among the people of Medina, gives the lie to their claim, for he says: "Anyone who deliberately breaks his fast for one day in Ramadan must make up the entire month." This is because, in his view, it is like a single day and like a single prayer: if one unit of it is deliberately invalidated, the whole is invalidated. Everything we have mentioned thus makes it clear that all this belongs to a single category, with no difference between any of its instances. We have not said this on the basis that we assign some of what we have mentioned the same ruling as the rest by analogy—Allah forbid that! Rather, we have shown the proponents of analogy their inconsistency concerning the unsound analogy that they approve, pronounce valid, and use as a basis for rulings. As for us, our sole basis in everything we have mentioned is what we have already explained: every act devoid of intention, and every intention devoid of action, is invalid. This is because of His saying, exalted is He: "They were commanded only to worship Allah, devoting religion sincerely to Him, inclining to the true faith, and to establish prayer and give the obligatory alms; and that is the upright

religion." He has thus commanded us to do two things, as you see: worship, which is action, and sincere devotion, which is intention. Neither therefore suffices without the other. And because of his saying ﷺ, "Actions are only by intentions, and each person has what he intended," this text establishes that there is no action without an intention accompanying it, neither preceding nor following it; and because of His saying, exalted is He: "Call them after their fathers; that is more equitable in Allah's sight. If you do not know their fathers, then they are your brothers in religion and your clients. There is no blame upon you for what you have done mistakenly, but rather for what your hearts have deliberately intended. And Allah is forgiving, merciful." Unless a text comes establishing an exception to something in these texts, in which case we follow it; otherwise, we do not. One of them asked me, saying: "What do you say about someone who breaks his fast, forgetting that he is fasting?" I told him: "His fast is complete." He said: "Then what do you say about someone who forgetfully omits one unit of his prayer?" I said: "He performs it so long as his ablution has not been invalidated, or repeats the entire prayer if his ablution has been invalidated." He said to me: "Why have you distinguished between the two cases? Why did you not allow the prayer to be valid despite his forgetting part of it, just as you allowed the fast to be valid despite his forgetting part of it by breaking his fast during part of his day?" The answer—and success comes through Allah, exalted is He—is that we are not proponents of analogy such that we would be bound by this question. We have simply followed the text concerning someone who breaks his fast forgetfully, namely that he is to complete his fast; and concerning someone who forgets his prayer or part of it, we have followed the requirement that he perform it. For we are commanded by the text to pray, and part of a prayer is prayer. Thus, someone who has failed to pray through forgetfulness is told, on the authority of the text: "Perform the prayer you forgot when you remember it"—and nothing more. Nevertheless, we will voluntarily show him the unsoundness of what he sought to make binding upon us by means of the analogy they advocate, although they are the people least willing to apply it consistently. We say—and success comes through Allah, exalted is He—that someone who forgetfully omits a unit of prayer does not resemble someone who breaks his fast forgetfully. Rather, someone who

مع نسيان بعضه بإفطار في بعض نهاره؟. فالجواب وبالله تعالى التوفيق: إننا لسنا من أصحاب القياس فيلزمنا هذا السؤال، وإنما اتبعنا النص الوارد فيمن أفطر ناسيا أنه يتم صومه، واتبعنا فيمن نسي صلاته أو بعضها أن يصليها، لأننا مأمورون بالصلاة بالنص، وبعض الصلاة صلاة، فمن لم يصل ناسيا، قيل له بالنص: أقم الصلاة التي نسيت إذا ذكرتها ولا مزيد، ولكنا نتطوع ونريه فساد ما أراد إلزامنا إياه من طريق القياس الذي يدعونه، وهم أترك الناس لطرده. فنقول وبالله تعالى التوفيق: ليس يشبه تارك ركعة ناسيا من أفطر ناسيا، وإنما يشبه من أفطر ناسيا من تكلم في صلاته ناسيا، ويشبه تارك الركعة ناسيا من نسي أنه صائم، فنوى الفطر في باقي نهاره إلا أن النص فرق بين حكميهما وذلك أن النبي صلى الله عليه وسلم يقول من نسي صلاة أو نام عنها فليصلها إذا ذكرها ولم يأمر في نسيان الصوم بذلك والصوم له وقت محدود حده الله تعالى فلا سبيل إلى نقله إلى وقت آخر أصلا إلا حيث جاء النص بنقله فقط، ومن تعدى ذلك فقد تعدى حدود الله تعالى قال الله عز وجل {يأيها لنبي إذا طلقتم لنسآء فطلقوهن لعدتهن وأحصوا لعدة وتقوا لله ربكم لا تخرجوهن من بيوتهن ولا يخرجن إلا أن يأتين بفاحشة مبينة وتلك حدود لله ومن يتعد حدود لله فقد ظلم نفسه لا تدرى لعل لله يحدث بعد ذلك أمرا} نعوذ بالله من الظلم والظلم حرام. وأما من نوى أن يفطر ولو بعد ساعة ولم ينو أنه مفطر في وقته ذلك فلا يكون بذلك مفطرا أصلا، فإن جازت تلك الساعة ولم يحدث فيها نية للفطر مجددة لم يضر صومه تلك شيئا وصومه تام.

breaks his fast forgetfully resembles someone who speaks during his prayer forgetfully. Someone who forgetfully omits a unit of prayer resembles someone who forgets that he is fasting and consequently intends not to fast for the remainder of his day. The text, however, distinguishes between their two rulings. This is because the Prophet ﷺ says: "Whoever forgets a prayer or sleeps through it, let him perform it when he remembers it." He gave no such command concerning forgetting a fast. Fasting has a defined time that Allah, exalted is He, has specified. There is therefore absolutely no way to transfer it to another time except precisely where a text has come authorizing its transfer. Whoever goes beyond this has transgressed the limits of Allah, exalted is He. Allah, mighty and majestic, said: "O Prophet, when you divorce women, divorce them for their waiting period, and count the waiting period, and fear Allah, your Lord. Do not expel them from their homes, nor should they leave, unless they commit a manifest indecency. Those are Allah's limits, and whoever transgresses Allah's limits has wronged himself. You do not know: perhaps Allah will bring about some matter after that." We seek refuge in Allah from wrongdoing, and wrongdoing is forbidden. As for someone who intends to break his fast, even an hour later, but does not intend that he is breaking his fast at that present time, he does not thereby break his fast at all. If that hour passes and he does not form a renewed

intention during it to break his fast, that earlier intention does not harm his fast in any way, and his fast is complete.[17][18][19][20][21][22]

L2246–2251 Likewise, someone who intends to commit illicit sexual intercourse but does not do so, or to drink but does not drink, or to give charity but does not give it, has nothing recorded to his credit or against him so long as he does not actually do any of these things. All of this falls within a single category. There is no action without an intention accompanying its commencement, with the commencement of the action coming after the intention has been formed. Error is of two kinds. One is an act that a person did not intend at all, as when a man shoots at a target and hits a person whom he did not intend to hit; or when someone draws in his breath and draws in a fly, which enters his throat while he is fasting; or when he intends to scratch his thigh and touches his penis. This is one kind, and it is what the speculative theologians call "generation," because it was generated by his act although he did not intend to perform it. And the second is an act that a person intended to perform, but by which he intended neither obedience nor disobedience, nor intended what resulted from his act, nor aimed at any part of what he was commanded to do or at the contrary of what he was commanded to

وهكذا من نوى أن يزني ولم يزن أو أن يشرب ولم يشرب أو أن يتصدق ولم يتصدق، لا يكتب له ولا عليه ما لم يفعل من كل ذلك شيئا، وهو كله باب واحد ولا عمل إلا بنية مصحبة للدخول فيه يكون أول الدخول فيه بعد إحداثها. والخطأ يكون على ضربين: أحدهما فعل لم يقصده الإنسان أصلا، وذلك كرجل رمى غرضا فأصاب إنسانا لم يقصده، وكإنسان جر نفسه فاستجر ذبابا، فدخل حلقه وهو صائم، أو أراد حك فخذه فمس ذكره فهذا وجه، وهو الذي يسميه أهل الكلام التولد، لأنه تولد عن فعله ولم يقصد هو فعله. والوجه الثاني: فعل قصد الإنسان عمله إلا أنه لم ينو بذلك طاعة ولا معصية، ولا نوى بذلك ما حدث من فعله، ولا قصد إلى بعض ما أمر به، ولا إلى خلاف ما أمر به كإنسان لطم آخر فوافق منية الملطوم، أو كإنسان صائم عمد الأكل وهو غير ذاكر لصومه، ولا قاصد إفساد صومه، أو نسي أنه في صلاة فقصد إلى الأكل أو إلى الكلام أو إلى المشي غير عامد لإفساد صلاته، أو نسي أنه على طهارة فقصد إلى مس ذكره غير قاصد بذلك إلى نقض وضوئه، أو سقاه إنسان بحضرة عدول من إناء أخبره أن فيه نبيذا غير مسكر، فلما جرع منه قاصدا إلى شربه علم أنه خمر، فأزاله عن فيه بعد أن شرب منه، أو وطىء امرأة لقيها في فراشه عامدا لوطئها وهو يظنها امرأته، فإذا بها أجنبية أدخلت عليه، أو قرأ آية قاصدا إلى الألفاظ التي قرأ يظنها من القرآن وهي بخلاف ذلك في القرآن، أو قتل صيدا عامدا لقتله غير ذاكر لإحرامه وهو محرم. فهذا وجه ثان وكلاهما مرفوع لا ينقض شيء من ذلك عملا ولا إيمانا، ولا يوجب إثما ولا حكما إلا حيث جاء النص بأنه يوجب حكما مما ذكرنا، فيوقف عنده ويكون مستثنى من الجملة التي ذكرنا منها طرفا، كالنص الوارد في إيجاب الدية على العاقلة، لأنه في كلا الوجهين المذكورين لم ينو معصية. وكذلك من فعل أي فعل كان ولم ينو به الطاعة لله تعالى فهو غير موجب له أجرا ولا أدى ما

[17] **Translator's note (L2238):** "Whoever lacks the intention and utters faith has faith" follows the supplied wording. It apparently omits a negation: the surrounding argument would require "has no faith." The translation retains the transmitted assertion.

[18] **Translator's note (L2241):** The supplied Qur'anic quotation, from 98:5, reads ليعبدوا الله where the standard wording is ليعبدوا الله, adding a lām before Allah. The translation follows the evident intended sense; the quotation also contains several defective spellings of definite articles.

[19] **Translator's note (L2242):** This completes the quotation of Qur'an 98:5 begun in the preceding segment. The supplied لقيمة is a defective spelling of القيمة, understood here as "upright."

[20] **Translator's note (L2243):** In the quotation of Qur'an 33:5, the supplied دعوهم lacks the initial alif of ادعوهم, "Call them." The translation adopts that reading, as required by the context; other missing alifs in the quotation likewise appear to be transcription defects.

[21] **Translator's note (L2245):** The quotation is Qur'an 65:1. Its supplied Arabic repeatedly omits alifs, particularly in definite articles and the name Allah; the translation treats these as spelling defects.

[22] **Qur'an references (L2238):** Qur'an 33:5 (Al-Ahzab); Qur'an 65:1 (At-Talaq).

do. Examples include someone who slaps another person and whose slap coincides with the death of the person slapped; someone fasting who intentionally eats while neither remembering his fast nor intending to invalidate it; someone who forgets that he is praying and intentionally eats, speaks, or walks, without deliberately seeking to invalidate his prayer; someone who forgets that he is in a state of ritual purity and intentionally touches his penis, without thereby intending to invalidate his ablution; someone to whom another person, in the presence of upright witnesses, gives a drink from a vessel, telling him that it contains a non-intoxicating infusion, but who, upon taking a draught with the intention of drinking it, realizes that it is wine and removes it from his mouth after having drunk some of it; someone who intentionally has intercourse with a woman he finds in his bed, thinking her to be his wife, only for her to prove to be an unrelated woman who has been brought in to him; someone who recites a verse, intending the words he recites and thinking them to be from the Qur'an, although it is otherwise in the Qur'an; or someone who intentionally kills game, intending to kill it, while forgetting his state of ritual consecration, although he is in that state. This is a second kind. Both kinds are excused: none of these things invalidates an act or faith, or entails sin or a legal consequence, except where a text establishes that something we have mentioned entails a legal consequence. There one stops at the text, and it constitutes an exception to the general category of which we have mentioned some instances, such as the text imposing blood money upon the kin group responsible for its payment. For in both of the kinds mentioned, he did not intend disobedience. Likewise, whoever performs any act whatsoever without intending thereby obedience to Allah, exalted is He, does not thereby earn a reward, nor has he discharged what he was commanded to do. As for deliberate action linked to an intention directed toward what results from that deliberate action, or toward some aspect of what he is engaged in—as when someone fasting intentionally eats while remembering that he is observing an obligatory fast; or strikes a person with something capable of causing death, intending to strike him with it and knowing that something of that kind may cause death; or deliberately alters the Qur'an, knowing that it is not thus in the written Quran; or his drinking wine while knowing it to be wine; or his having intercourse with a

أمر به. وأما العمد المرتبط بالقصد إلى ما يحدث من ذلك العمد، أو إلى بعض ما هو فيه كقصد الصائم إلى الأكل، وهو ذاكر لأنه صائم فرض، وكضربه إنسانا بما يمات منه قاصدا لضربه به، عالما بأنه قد يمات من مثله، وكتبديله القرآن عامدا عالما بأنه ليس كذلك في المصحف، وكشربه الخمر، وهو يعلمها خمرا، وكوطئه أجنبية، وهو يعلم أنها ليست له زوجا، ولا ملك يمين. فهذا كله يوجب الحكم بالإثم، وبما أتى به النص. وإنما قلنا في قاتل الصيد عامدا لقتله غير ذاكر لإحرامه: إنه لا جزاء عليه لقوله تعالى في آخر الآية {يأيها لذين آمنوا لا تقتلوا لصيد وأنتم حرم ومن قتله منكم متعمدا فجزآء مثل ما قتل من لنعم يحكم به ذوا عدل منكم هديا بالغ لكعبة أو كفارة طعام مساكين أو عدل ذلك صياما ليذوق وبال أمره عفا لله عما سلف ومن عاد فينتقم لله منه ولله عزيز ذو نتقام} والنقمة لا تقع إلا على عاص ولا يكون عاصيا بقتل الصيد أصلا إلا حتى يعمد قتله، وهو مع ذلك ذاكر لإحرامه، عالم بأنه منهي عن قتله في تلك الحال، هذا ما لا خلاف فيه، أعني أنه لا يأثم إلا في هذه الحال. وكذلك من قصد بنيته إلى فعل الطاعة فهو مؤد لما أمر به من ذاك والنفس هي الفعالة، وفعلها المعرفة بما نفعله وغرضها فيه، وهي المحركة للجسد فلا بد من توفيتها فعلها الذي أمرت به بتمامه. ومما ذكرنا: من لقي رجلا في صف المشركين فظنه مشركا فقتله عمدا، وهو لا يعلم أنه مسلم، فإذا هو مسلم، فلا خلاف في أنه لا قود عليه ولا إثم. وكذلك سقط الإثم والقود عن المتأول من الحكام، وإن كان عامدا، ليس ذلك إلا لأنه لم يقصد خلاف ما أمر به وهو يعلمه معصية. وكذلك من أكل لحم خنزير وهو يظنه لحم كبش أو حنث غير ذاكر ليمينه فكل هذا لا شيء عليه فيه ولا قضاء ولا إثم ولا تعزير ولا حد. فإن جاء نص في شيء ما من ذلك كان مستثنى، كمن صلى وهو يظن أنه متوضىء، فإذا به غير متوضىء فذكر بعد ذلك، فهذا لم يصل فليصل، لقوله عليه السلام: لا صلاة إلا بطهور وهذا لم يصل كما أمر، وأما من صلى

وفي ثوبه شيء فرض اجتنابه على من بلغه، أو صلى إلى غير القبلة، فإن كان ممن لم يبلغه فرض اجتناب ذلك الشيء، ولا فرض القبلة، فصلاته تامة، لأنه لم يكلف ما لم يبلغه، فإن كان ممن بلغه كل ذلك فعليه أن يعيد الصلاة ما دام وقتها، لأنه علم ووقتها قائم، إذ لم يصل تلك الصلاة كما أمر، ففرض عليه أن يصليها كما أمر. وأما بعد الوقت فلا، لأنه لا يصلي صلاة إلا في وقتها حاشا النائم والناسي والسكران، فإنهم خصوا بالنص فيهم، وكالدية وعتق الكفارة في قتل الخطأ، فهذا مستثنى بالنص من سائر ما لم يقصده المرء.

woman who is unrelated to him while knowing that she is neither his wife nor a woman whom his right hand possesses. All this requires a judgment of sinfulness and whatever the revealed text prescribes. We said, concerning someone who kills game deliberately, intending to kill it but not remembering his state of ritual consecration, that he owes no compensation because of His words, exalted is He, at the end of the verse: {O you who believe, do not kill game while you are in ritual consecration. Whoever among you kills it deliberately must provide compensation equivalent to what he killed, from livestock, as judged by two just men among you, as an offering reaching the Kaaba; or an expiation consisting of feeding needy people; or the equivalent of that in fasting, so that he may taste the ill consequence of his deed. Allah has pardoned what has passed, but whoever does it again, Allah will exact vengeance upon him. Allah is mighty, possessed of vengeance.} Vengeance falls only upon someone who disobeys, and a person cannot be disobedient through killing game at all unless he deliberately kills it while also remembering his ritual consecration and knowing that he is forbidden to kill it in that state. This is a matter on which there is no disagreement: I mean that he incurs sin only in this situation. Likewise, someone whose intention is directed toward performing an act of obedience is fulfilling what he has been commanded to do in that respect. The soul is the agent; its action consists in knowing what we do and its purpose in doing it, and it is what moves the body. It must therefore perform in full the action it has been commanded to perform. Among the cases we have mentioned is that of someone who encounters a man in the ranks of the polytheists, thinks him a polytheist, and deliberately kills him without knowing that he is a Muslim, only for him to turn out to be a Muslim. There is no disagreement that he is subject neither to retaliation nor to sin. Likewise, sin and retaliation are waived for judges who act on an interpretation, even when they act deliberately. This is solely because such a person did not intend to contravene what he had been commanded while knowing it to be an act of disobedience. The same applies to someone who eats pork while thinking it to be mutton, or breaks an oath without remembering his oath. In all these cases he incurs no liability: no making up of the act, no sin, no discretionary punishment, and no prescribed punishment. If a revealed text addresses any particular instance

of this, it constitutes an exception. An example is someone who prays while thinking that he has performed ablution, when in fact he has not, and subsequently remembers. This person has not prayed, so let him pray, because of his saying, peace be upon him, 'There is no prayer without purification.' This person has not prayed as he was commanded. As for someone who prays with something on his garment that anyone whom the command has reached is obliged to avoid, or prays facing a direction other than the prayer direction: if he is someone whom neither the obligation to avoid that thing nor the obligation concerning the prayer direction has reached, his prayer is complete, because he has not been charged with what has not reached him. If he is someone whom all of that has reached, he must repeat the prayer as long as its appointed time remains, because he has come to know while its time still remains. Since he did not perform that prayer as commanded, he is obliged to perform it as commanded. After its time, however, he is not, because no prayer is to be performed except within its appointed time, apart from the sleeper, the forgetful person, and the intoxicated person, for they have been singled out by revealed texts concerning them. Another example is blood money and the freeing of a slave as expiation for accidental killing: this is excepted by the revealed text from all other things a person has not intended.[232425]

L2252–2258 Know that our opponents contradict themselves in everything we have mentioned, with a contradiction in which they refer back to no foundational principle. Rather, sometimes they impose liability upon him and sometimes

واعلم أن خصومنا يتناقضون في كل ما ذكرنا تناقضا لا يرجعون فيه إلى أصل، لكن مرة يلزمونه ومرة لا يلزمونه دون برهان من الله تعالى في كل ذلك. ومما يؤيد ما قلنا ما حدثنا عبد الله بن يوسف، حدثنا أحمد بن فتح، ثنا عبد الوهاب بن عيسى، ثنا أحمد بن محمد، ثنا أحمد بن علي، ثنا مسلم، ثنا محمد بن المثنى، ثنا محمد بن جعفر، ثنا شعبة، عن عمرو بن مرة قال: سمعت أبا وائل. هو شقيق بن سلمة يقول: ثنا أبو موسى الأشعري أن رجلا أعرابيا أتى النبي صلى الله عليه وسلم فقال يا رسول الله الرجل يقاتل للمغنم والرجل يقاتل للذكر، والرجل يقاتل ليرى مكانه فمن في سبيل الله فقال له رسول الله صلى الله عليه وسلم من قاتل لتكون كلمة الله هي العليا فهو في سبيل الله. وقد روى الأعمش هذا الحديث فذكر فيه: الذي يقاتل شجاعة وحمية

[23] **Translator's note (L2246):** جر نفسه is read here as "drew in his breath," with نفس understood as nafas, "breath"; the unvocalized wording is awkward. "Generation" renders the theological technical term التولد: an effect produced through an agent's act, distinguished here from what the agent directly intended.

[24] **Translator's note (L2247):** The phrase فوافق منية الملطوم literally says that the slap "coincided with the death of the person slapped"; it does not explicitly state the causal relation. "An unrelated woman" renders أجنبية, here a woman outside the marital or other relationship that would make intercourse lawful. The description of the misrecited verse is compressed and awkward: the supplied wording says that the words are thought to belong to the Qur'an although the Qur'anic wording is otherwise.

[25] **Qur'an references (L2246):** Qur'an 5:95 (Al-Ma'idah).

they do not, without any demonstration from Allah, exalted is He, in all of that. Supporting what we have said is what Abd Allah ibn Yusuf related to us: Ahmad ibn Fath related to us: Abd al-Wahhab ibn Isa related to us: Ahmad ibn Muhammed related to us: Ahmad ibn Ali related to us: Muslim related to us: Muhammed ibn al-Muthanna related to us: Muhammed ibn Jafar related to us: Shubah related to us, from Amr ibn Murrah, who said: I heard Abu Wail—who is Shaqiq ibn Salamah—say: Abu Musa al-Ashari related to us that a Bedouin man came to the Prophet ﷺ and said, 'O Messenger of Allah, one man fights for spoils, another fights to be spoken of, and another fights so that his standing may be seen. Which of them is in Allah's path?' The Messenger of Allah ﷺ said to him, 'Whoever fights so that Allah's word may be supreme is in Allah's path.' Al-Amash also transmitted this report, mentioning in it the person who fights out of bravery, partisan zeal, anger, or ostentation, and that he ﷺ counted as being in Allah's path only someone who fights so that the word of Allah, mighty and majestic, may be supreme. If an act could discharge an obligation without intention, jihad would do so, since it is the best of deeds after faith. Yet there is no possibility that an act should discharge an obligation without intention. Also belonging to this category is someone compelled to unbelief: if he worships with his tongue but does not worship with his heart, he does not thereby depart from faith. Allah, exalted is He, said: {Whoever disbelieves in Allah after his faith, except someone who is compelled while his heart is at rest in faith—but those who open their breasts to unbelief, upon them is wrath from Allah, and for them is a tremendous punishment.} Thus He, exalted is He, took account only of the heart's action. The Prophet ﷺ also made this clear when he was asked about someone who ate forgetfully: he stated, peace be upon him, that this did not invalidate his fast. There is no doubt that this fasting person deliberately ate, but he was remembering his fast. Thus what we have said is established explicitly by the text, and success comes through Allah, exalted is He. He, exalted is He, said: {So fight in Allah's path: you are charged only with yourself. Urge on the believers; perhaps Allah will restrain the might of those who disbelieve. Allah is greater in might and more severe in exemplary punishment.} Some people have invoked this as an argument for invalidating one person's performing pilgrimage on behalf of another,

وغضبا ورياء وأنه صلى الله عليه وسلم لم يجعل في سبيل الله إلا من قاتل لتكون كلمة الله عز وجل العليا، فلو أجزأ عمل بغير نية لأجزأ الجهاد الذي هو أفضل الأعمال بعد الإيمان، ولكن لا سبيل إلى أن يجزىء عمل بغير نية. ومن هذا الباب أيضا المكره على الكفر، فإن عبد بلسانه ولم يعبد بقلبه فلم يخرج بذلك عن الإيمان قال الله تعالى {من كفر بالله من بعد إيمانه إلا من أكره وقلبه مطمئن بالإيمان ولكن من شرح بالكفر صدرا فعليهم غضب من الله ولهم عذاب عظيم} فإنما راعى تعالى عمل القلب فقط وقد بين ذلك النبي صلى الله عليه وسلم إذ سئل عمن أكل ناسيا فأخبر عليه السلام أنه لم ينتقض صومه بذلك، ولا شك في أن هذا الصائم عمد الأكل، ولكنه كان ذاكرا لصيامه، فصح ما قلنا نصا، وبالله تعالى التوفيق وقال تعالى {فقاتل في سبيل الله لا تكلف إلا نفسك وحرض لمؤمنين عسى لله أن يكف بأس لذين كفروا ولله أشد بأسا وأشد تنكيلا} احتج بهذا قوم في إبطال أن يحج أحد عن غيره أو يصلي أحد عن غيره أو يصوم أحد عن غيره، وقد أخطؤوا في ذلك خطأ فاحشا وليس في هذه الآية معارضة لأمر النبي صلى الله عليه وسلم بالحج عن الشيخ الكبير وبالصيام عن الولي الميت، وبقضاء النذر عن الميت، لأن كل ما ذكرنا فالحي المؤدي هو المكلف ذلك في نفسه، وهي شريعة ألزمه الله تعالى إياها وافترضها عليه، كالصلوات الخمس وسائر صيامه في رمضان، فقد تعين في ذلك فرضا على الولي زائدا، كلفه في نفسه، هو مأجور على أدائه، لأنه أدى فرضا كلفه. والله تعالى متفضل على الميت والمحجوج عنه بأجر آخر زائد، وخزائن الله لا تنفد، وفضله تعالى لا ينقطع، فبطل ظن من جهل ولم يفهم، وقدر أن بين الآية التي ذكرنا، والأحاديث التي وصفنا تعارضا وقد تناقضوا فأجازوا أن يؤدي المرء الدين عن غيره، وجعلوا له أجرا بذلك. وللميت المؤدى عنه حطيطة الدين الذي عليه، وهكذا قلنا نحن في سائر ما أمرنا بأدائه من الصوم والحج والصلاة المنذورة ولا فرق،، وأوجبوا غرم بني عم المرء الدية

praying on behalf of another, or fasting on behalf of another. They have committed a gross error in this. There is nothing in this verse that conflicts with the command of the Prophet, may Allah bless him and grant him peace, to perform pilgrimage on behalf of an elderly man, to fast on behalf of a deceased relative, and to fulfill a vow on behalf of the deceased, because in everything we have mentioned, the living person who performs the act is himself the one charged with it. It is a religious ordinance that Allah, exalted is He, has made binding upon him and imposed upon him as an obligation, like the five prayers and all his fasting in Ramadan. An additional obligation has thus become specifically incumbent upon the relative, with which he himself has been charged. He is rewarded for performing it because he has fulfilled an obligation with which he was charged. Allah, exalted is He, graciously bestows another, additional reward upon the deceased and upon the person on whose behalf pilgrimage is performed. Allah's treasuries are never exhausted, and His bounty, exalted is He, never ceases. Thus the supposition of someone who is ignorant, has not understood, and has imagined a conflict between the verse we mentioned and the reports we described is invalidated. They have contradicted themselves: they have permitted a person to discharge another's debt, assigning him a reward for that and assigning to the deceased on whose behalf it is discharged the remission of the debt he owed. This is precisely what we say concerning all the fasting, pilgrimage, and vowed prayer that we have been commanded to perform, and there is no difference. They have also required a man's paternal cousins to pay the blood money on behalf of someone who kills accidentally, thereby contradicting their own position. If they say that consensus made this obligatory, they lie, because Uthman al-Batti does not hold this view—meaning the payment of blood money by the liable kin group on behalf of someone who kills accidentally. Abu Muhammed, may Allah have mercy on him, said: Our opponent has also argued on this matter from His words, exalted is He: {And that a human being has only what he has striven for.} Abu Muhammed said: We have already explained that everything he ﷺ said must be joined to what his Lord, exalted is He, said. It is therefore established that He, exalted is He, may graciously favor a person by allowing his child's supplication to benefit him after his death, although it is not something he strove for; and

عن القاتل خطأ فنقضوا قولهم، فإن قالوا: الإجماع أوجب ذلك كذبوا، لأن عثمان البتي لا يرى ذلك، يعني غرم العاقلة الدية عن قاتل الخطأ. قال أبو محمد رحمه الله: واحتج مخالفنا أيضا في ذلك بقوله تعالى: {وأن ليس للإنسان إلا ما سعى} قال أبو محمد وقد بينا فيما خلا أن يضاف كل ما قاله صلى الله عليه وسلم إلى ما قال ربه تعالى فصح أنه تعالى قد يتفضل على المرء بأن يلحقه دعاء ولده بعد موته وليس بما سعى، وأنه تلحقه صدقة وليه عنه وليس مما سعى، وكذلك سائر ما نص عليه السلام على أنه يلحقه وقال تعالى {وقال لذين كفروا للذين آمنوا تبعوا سبيلنا ولنحمل خطاياكم وما هم بحاملين من خطاياهم من شيء إنهم لكاذبون * وليحملن أثقالهم وأثقالا مع أثقالهم وليسألن يوم لقيامة عما كانوا يفترون} وقال تعالى {ليحملوا أوزارهم كاملة يوم لقيامة ومن أوزار لذين يضلونهم بغير علم ألا ساء ما يزرون} وأخبر عليه السلام أن من سن في الإسلام سنة حسنة كان له أجر من عمل بها إلى يوم القيامة، لا ينقص ذلك من أجورهم شيئا، ومن سن سنة سيئة كان له مثل وزر من عمل بها إلى يوم القيامة، لا ينقص ذلك من أوزارهم شيئا.

that charity given on his behalf by his relative benefits him, although it is not something he strove for. The same applies to everything else that he, peace be upon him, explicitly stated would benefit him. He, exalted is He, said: {Those who disbelieve said to those who believe, 'Follow our way, and let us bear your sins.' Yet they will not bear any of their sins at all. They are indeed liars. And they will surely bear their own burdens, and burdens alongside their burdens; and on the Day of Resurrection they will surely be questioned about what they used to fabricate.} He, exalted is He, also said: {So that they may bear their burdens in full on the Day of Resurrection, and some of the burdens of those whom they lead astray without knowledge. Indeed, evil is what they bear.} He, peace be upon him, stated that whoever establishes a good practice in Islam will have the reward of whoever acts upon it until the Day of Resurrection, without that diminishing their rewards at all; and whoever establishes a bad practice will bear the equivalent of the burden of whoever acts upon it until the Day of Resurrection, without that diminishing their burdens at all.[26][27][28][29]

L2259–2260 Abu Muhammed said: All of this is consistent, with no contradiction whatsoever. For the meaning of His saying, exalted is He, {Those who disbelieve say to those who believe, "Follow our path, and let us bear your sins." Yet they will bear nothing whatsoever of their sins. They are indeed liars}, is

قال أبو محمد: وكل هذا متفق لا تعارض فيه أصلا لأن معنى قوله تعالى {وقال لذين كفروا للذين آمنوا تبعوا سبيلنا ولنحمل خطاياكم وما هم بحاملين من خطاياهم من شيء إنهم لكاذبون} أي أنهم لا يسقطون عنهم بتقليدهم إياهم إثما، ولكن للعامل إثمه، وللسان مثل ذلك أيضا، وهذا بين، وبالله تعالى التوفيق وكذلك ما أمر به رسول الله صلى الله عليه وسلم من ألا يحنط الميت المحرم ولا يمس طيبا ولا يغطى وجهه ولا رأسه، وأن يكفن في ثوبه فإنه يبعث يوم القيامة ملبيا وما أمر به صلى الله عليه وسلم في الشهيد ألا يغسل ولا يكفن وأن يدفن في ثيابه وأخبر صلى الله عليه وسلم أنه يبعث يوم القيامة وجرحه يثعب دما اللون لون دم والريح ريح مسك فكلا الأمرين عمل كلفناه نحن وألزمناه، فمن فعله أطاع الله تعالى، ومن لم يفعله عصى الله عز وجل. فتخيل أهل الجهل والاستخفاف بأوامر الله تعالى وأوامر رسوله صلى الله عليه وسلم فقالوا إن عمل الميت قد انقطع فيا ليت شعري من قال لهم: إن هذا عمل

[26] **Translator's note (L2253):** The statement that the person who ate forgetfully 'was remembering his fast' reproduces the supplied Arabic. It appears inconsistent with both the immediately preceding description and the argument; the text may have lost a negation. The wording 'worships with his tongue' follows عبد بلسانه as supplied; no object of that worship is specified. The final salutation is divided between this unit and the next; its fragments are rendered in English.

[27] **Translator's note (L2254):** The opening completes the salutation begun in the preceding unit. Wali, translated here as 'relative,' denotes the person's relevant kin or responsible representative in this legal context.

[28] **Translator's note (L2256):** 'Liable kin group' translates al-aqilah, the group responsible for paying blood money in the case discussed. Wali is rendered consistently here as 'relative,' with the sense of the relevant kin or responsible representative.

[29] **Qur'an references (L2252):** Qur'an 16:106 (An-Nahl); Qur'an 4:84 (An-Nisa); Qur'an 53:39 (An-Najm); Qur'an 29:12 (Al-'Ankabut); Qur'an 29:13 (Al-'Ankabut); Qur'an 16:25 (An-Nahl).

that, through their imitation of them, they do not relieve them of any sin. Rather, the person performing the deed bears his sin, and the person who instituted it bears the like of that as well. This is clear, and success comes through Allah Most High.

Likewise, there is what the Messenger of Allah ﷺ commanded concerning a deceased person in the state of pilgrimage consecration: that he should not be treated with aromatic funerary preparations, that no perfume should touch him, that neither his face nor his head should be covered, and that he should be shrouded in his own garment, for he will be raised on the Day of Resurrection reciting the pilgrimage response. There is also what he ﷺ commanded concerning the martyr: that he should neither be washed nor shrouded, and that he should be buried in his clothes. He ﷺ reported that he will be raised on the Day of Resurrection with his wound gushing blood: its color will be the color of blood, and its scent the scent of musk. Both matters are deeds that we have been charged and obliged to perform. Whoever performs them obeys Allah Most High, and whoever does not perform them disobeys Allah, mighty and majestic.

Those characterized by ignorance and disregard for the commands of Allah Most High and the commands of His Messenger ﷺ then entertained a fancy and said, "The deceased person's deeds have ceased." Would that I knew who told them that this was a deed the deceased person had been commanded to perform! They were told only that it was a deed we ourselves had been commanded to perform concerning the deceased, just as we have been commanded to wash the rest of our dead, treat them with funerary preparations of lote leaves and camphor, and pray over them. All of this is alike, with no difference. The consecrated pilgrim's recitation of the pilgrimage response on the Day of Resurrection is a favor bestowed upon him then, and a recompense, like the gushing of the martyr's wound; there is no difference. Thus the obfuscation of the ignorant is invalidated, and praise belongs to Allah.

And His saying, exalted is He, {O people, be mindful of your Lord, and fear a day when no parent will avail his child, nor will any child avail his parent in anything. Allah's promise is indeed true. So do not let the life of this world deceive you, and do not let the deceiver deceive you concerning Allah}. And

أمر به الميت وإنما قيل لهم: إنه عمل أمرنا نحن به في الميت، كما أمرنا بغسل سائر موتانا وتحنيطهم بالسدر والكافور والصلاة عليهم، فهذا كله سواء ولا فرق. وتلبية المحرم يوم القيامة فضل له حينئذ وجزاء كشعب جرح الشهيد، ولا فرق فبطل تمويه أهل الجهل والحمد لله وقوله تعالى {يأيها لناس تقوا ربكم وخشوا يوما لا يجزي والد عن ولده ولا مولود هو جاز عن والده شيئا إن وعد لله حق فلا تغرنكم لحياة لدنيا ولا يغرنكم بلله لغرور} وقوله تعالى {وتقوا يوما لا تجزي نفس عن نفس شيئا ولا يقبل منها شفاعة ولا يؤخذ منها عدل ولا هم ينصرون} وقوله تعالى: {ولا تزر وازرة وزر أخرى وإن تدع مثقلة إلى حملها لا يحمل منه شيء ولو كان ذا قربى إنما تنذر لذين يخشون ربهم بلغيب وأقاموا لصلاة ومن تزكى فإنما يتزكى لنفسه وإلى لله لمصير} وقوله تعالى {ومن يكسب إثما فإنما يكسبه على نفسه وكان لله عليما حكيما} وقوله تعالى {قل أغير لله أبغي ربا وهو رب كل شيء ولا تكسب كل نفس إلا عليها ولا تزر وازرة وزر أخرى ثم إلى ربكم مرجعكم فينبئكم بما كنتم فيه تختلفون}

His saying, exalted is He, {And fear a day when no soul will avail another soul in anything, nor will intercession be accepted from it, nor will a ransom be taken from it, nor will they be helped}. And His saying, exalted is He, {No bearer of a burden shall bear another's burden. If a heavily laden soul calls for its load to be carried, nothing of it will be carried, even if the one called is a close relative. You warn only those who fear their Lord unseen and establish prayer. Whoever purifies himself purifies himself only for his own sake, and to Allah is the final destination}. And His saying, exalted is He, {Whoever earns a sin only earns it against himself. And Allah is ever Knowing, Wise}. And His saying, exalted is He, {Say: Shall I seek a lord other than Allah, when He is the Lord of everything? Every soul earns only against itself, and no bearer of a burden shall bear another's burden. Then to your Lord is your return, and He will inform you of that over which you used to differ}.[30][31]

L2261 Abu Muhammed, may Allah have mercy on him, said: None of this contradicts what we have mentioned in any way whatsoever. Its meaning is only that no one bears another's sin or burden unless he instituted that evil deed, in which case he bears the like of the sin of those who perform it, forever. For the verses must be taken together. He, exalted is He, has said, {Whoever intercedes with a good intercession shall have a share of it, and whoever intercedes with an evil intercession shall have a portion of it. And Allah is ever a guardian over everything}. And he, peace be upon him, reported that, for every person killed, the first son of Adam bears a portion of responsibility for that killing, because he was the first to institute killing.

Thus the meaning of the earlier verses is that Allah does not place anyone's sin upon someone innocent of it. As for someone who initiates evil and puts it in place, he has a share in every deed that accords with what preceded it. Likewise, this always applies to someone who institutes good. No one's deed,

قال أبو محمد رحمه الله: فهذا كله لا يعارض ما ذكرنا البتة، وإنما معناه أن أحدا لا يحمل إثم غيره ولا وزره، إلا أن يكون سن ذلك العمل السوء فله مثل إثم صانعيه أبدا، لأن الآي مضاف بعضها إلى بعض، وقد قال تعالى: {من يشفع شفاعة حسنة يكن له نصيب منها ومن يشفع شفاعة سيئة يكن له كفل منها وكان الله على كل شيء مقيتا} وأخبر عليه السلام أن كل قتيل يقتل فعلى ابن آدم الأول كفل منه، لأنه أول من سن القتل. فمعنى الآي الأول أن الله لا يلقي إثم أحد على بريء منه، وأما من استن الشر ورتبه فله حظ من كل فعل يوافق ما سبق، وكذلك من سن الخير أبدا، فلا يلحق عمل أحد أحدا أبدا إلا ما جاء به النص، فيصير حينئذ فعلا مأمورا به من كلف أداه، يؤجر على فعله ويأثم بتركه كسائر ما أمر به ولا فرق، وبالله تعالى التوفيق وحسبنا الله ونعم الوكيل

[30] **Translator's note (L2259):** The unvocalized «وللسان» is read here as referring to the person who institutes the deed, consistent with the preceding and following discussion.

[31] **Qur'an references (L2259):** Qur'an 29:12 (Al-'Ankabut); Qur'an 31:33 (Luqman); Qur'an 2:48 (Al-Baqarah); Qur'an 35:18 (Fatir); Qur'an 4:111 (An-Nisa); Qur'an 6:164 (Al-An'am).

then, ever accrues to anyone else except where an explicit text provides for it. It then becomes a commanded deed: whoever is charged with performing it is rewarded for doing it and incurs sin by leaving it undone, just like everything else he has been commanded to do, with no difference. Success comes through Allah Most High. Allah is sufficient for us, and an excellent Trustee He is.[32]

[32] **Qur'an references (L2261):** Qur'an 4:85 (An-Nisa).

الباب 33: شرائع الأنبياء قبل محمد

Chapter 33: The Revealed Laws of Earlier Prophets

Ibn Ḥazm · Arabic–English parallel edition

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L2262 **[Chapter Thirty-Three: On the Revealed Laws of the Prophets, Peace Be upon Them, before Muhammed ﷺ: Are We Obliged to Follow Them Unless We Are Forbidden to Do So, or Is It Entirely Impermissible for Us to Follow Anything in Them Except What Is Included in Our Own Revealed Law and Which We Ourselves Have Been Explicitly Commanded to Perform, Specifically by Name?]**

L2263–2269 Abu Muhammed, may Allah have mercy on him, said: We have mentioned the grounds through which Allah Most High has required us to worship and obey Him, and from which alone any ruling in any matter of religion may be derived. Now is the time to mention, if Allah Most High wills, the grounds through which some people have fallen into error in religion, ruling on their basis and treating them as evidence and demonstrations, although they are nothing of the sort. The correct position is that it is unlawful to rule on the basis of any of them in religion. They are seven things: the revealed laws of the earlier prophets before our Prophet Muhammed ﷺ; precaution; juristic preference; uncritical imitation; personal opinion; contrary implication; and analogy, which includes effective causes. We shall, if Allah Most High wills, discuss these grounds chapter by chapter, explaining why they are invalid and why ruling on their basis is forbidden. Through Allah Most High we are strengthened.

As for the revealed laws of the prophets, peace be upon them, who lived before our Prophet Muhammed ﷺ, people hold two positions concerning them. Some say, "They are binding upon us unless we are forbidden to follow them." Others say, "They are not binding upon us, and it is impermissible to act upon anything in them unless we are addressed within our own religion with something corresponding to some part of them. We then abide by it in obedience to our Prophet ﷺ, rather than in adherence to the bygone revealed laws."

Abu Muhammed said: This is our position. Some people have added a qualification, saying, "Except the revealed law of Abraham ﷺ."

[الباب الثالث والثلاثون في شرائع الأنبياء عليهم السلام قبل محمد صلى الله عليه وسلم أيلزمنا اتباعها ما لم ننه عنها أم لا يجوز لنا اتباع شيء منها أصلا إلا ما كان منها في شريعتنا وأمرنا نحن به نصا باسمه فقط]

قال أبو محمد رحمه الله: قد ذكرنا الوجوه التي تعبدنا الله تعالى بها، والتي لا حكم في شيء من الدين إلا منها. وهذا حين نذكر إن شاء الله تعالى الوجوه التي غلط بها قوم في الديانة، فحكموا بها وجعلوها أدلة وبراهين، وليست كذلك، والصحيح أنه لا يحل الحكم بشيء منها في الدين وهي سبعة أشياء: شرائع الأنبياء السالفين قبل نبينا محمد صلى الله عليه وسلم والاحتياط والاستحسان والتقليد والرأي، ودليل الخطاب. والقياس. وفيه العلل. ونحن إن شاء الله تعالى ذاكرون هذه الأوجه بابا بابا. ومبينون وجه سقوطها وتحريم الحكم بها. وبالله تعالى نتأيد. فأما شرائع الأنبياء عليهم السلام الذين كانوا قبل نبينا محمد صلى الله عليه وسلم فالناس فيها على قولين فقوم قالوا هي لازمة لنا ما لم ننه عنها، وقال آخرون: هي ساقطة عنا، ولا يجوز العمل بشيء منها، إلا أن نخاطب في ملتنا بشيء موافق لبعضها فنقف عنده ائتمارا لنبينا صلى الله عليه وسلم لا اتباعا للشرائع الخالية قال أبو محمد: وبهذا نقول، وقد زاد قوم بيانا فقالوا إلا شريعة إبراهيم صلى الله عليه وسلم قال أبو محمد أما شريعة إبراهيم عليه السلام فهي هذه الشريعة التي نحن عليها نفسها: والبراهين على ذلك قائمة سنذكرها إن شاء الله تعالى، وإنما الاختلاف الذي ذكرنا في ما كان من شرائع الأنبياء عليهم السلام موجودا نصه في القرآن أو عن النبي صلى الله عليه وسلم وأما ما ليس في القرآن ولا صح عن النبي

Abu Muhammed said: As for the revealed law of Abraham, peace be upon him, it is this very revealed law that we follow. The demonstrations establishing this are in place; we shall mention them, if Allah Most High wills. The disagreement we have mentioned concerns only those provisions of the revealed laws of the prophets, peace be upon them, whose text is found in the Quran or is transmitted from the Prophet ﷺ. As for what is neither in the Quran nor authentically transmitted from the Prophet ﷺ, we know of no one who gives unrestricted permission to act upon it. Nevertheless, some people have issued legal opinions based upon such provisions in some of their positions. One example is some Malikis' prohibition of anything among animals slaughtered by Jews that is found to have its lung adhering to its side. There is no text in either the Quran or the Sunnah stating that this was forbidden to the Jews. Indeed, it is not even a matter of agreement among the Jews: it is something peculiar to the Rabbanites among them. As for the Ananites, the Isawites, and the Samaritans, they agree that eating it is permissible for them. These people, then—may Allah grant us and them success—have taken care not to eat anything from animals slaughtered by Jews concerning which there is disagreement among the Jewish elders, may Allah curse them. They have been apprehensive about differing with Hillal and Shammay, the elder of the Rabbanites. Allah is sufficient for us, and an excellent Trustee He is.

Among the curious, repugnant, and outrageous things into which one of them has fallen in this matter—things from the like of which people of understanding ought to seek refuge with Allah, mighty and majestic—is that Isma'il ibn Ishaq said, concerning the Prophet's ﷺ stoning of the two Jews who committed illicit sexual intercourse, "He did that only may Allah bless him and grant him peace ﷺ, in execution of what is in the Torah. Yet he himself considered, in his corrupt judgment, that he should hold himself above executing its prescribed stoning of Jewish adulterers who have the status of having been married, when they commit adultery. Thus he spared himself what he attributed to his Prophet ﷺ. We declare ourselves before Allah Most High free of this corrupt statement and this belief. If an ignorant person were to become an unbeliever through his ignorance, the person

صلى الله عليه وسلم فما نعلم من يطلق إجازة العمل بذلك إلا أن قوما أفتوا بها في بعض مذاهبهم، فمن ذلك تحريم بعض المالكيين لما وجد في ذبائح اليهود ملتصق الرئة بالجنب، وهذا مما لا نص في القرآن ولا في السنة على أنه حرم على اليهود، نعم ولا هو أيضا متفق عليه عند اليهود، وإنما هو شيء انفردت به الربانية منهم. وأما العانانية والعيسوية والسامرية فإنهم متفقون على إباحة أكله لهم. فتحرى هؤلاء القوم وفقنا الله وإياهم ألا يأكلوا شيئا من ذبائح اليهود فيه بين أشياخ اليهود لعنهم الله اختلاف، وأشفقوا من مخالفة هلال وشماي شيخ الربانية وحسبنا الله ونعم الوكيل. ومن طريف ما وقع لبعضهم في هذا الباب، وسمجه وشنعه الذي ينبغي لأهل العقول أن يستجيروا بالله عز وجل من مثله أن إسماعيل بن إسحاق قال في رجم النبي صلى الله عليه وسلم اليهوديين الزانيين إنما فعل ذلك صلى الله عليه وسلم تنفيذا لما في التوراة ورأى هو من رأيه الفاسد أن يرفع نفسه عن تنفيذ ما فيها من الرجم على اليهود الزناة المحصنين إذا زنوا فصان نفسه عما وصف به نبيه صلى الله عليه وسلم ونحن نبرأ إلى الله تعالى من هذا القول الفاسد، ومن هذا الاعتقاد، فلو كفر جاهل بجهله لكان قائل هذا القول أحق الناس بالكفر لعظيم ما فيه. واحتج أيضا في ألا يقول الإمام آمين إذا قال {بسم الله لرحمن لرحيم} بأن موسى عليه السلام إذا دعا لم يؤمن وأمن هارون عليهما السلام فسماهما تعالى داعيين بقوله تعالى {قال قد أجيبت دعوتكما فستقيما ولا تتبعآن سبيل لذين لا يعلمون} قال أبو محمد وفي هذا الاحتجاج من الغثاثة والبرد والسقوط والمجاهرة بالقبيح ما فيه، لأنه يقال له قبل كل شيء، من أخبرك أن موسى عليه السلام دعا ولم يؤمن؟ وأن هارون أمن ولم يدع، وهذا شيء إنما قاله بعض المفسرين بغير إسناد إلى النبي صلى الله عليه وسلم ومثل هذا لا يؤخذ إلا عن النبي صلى الله عليه وسلم أو عن كافة تنقل عن مثلها إلى ما هنالك فمن فاته هذان الوجهان فقد فاته الحق، ولم

making this statement would be the most deserving of all people of unbelief, because of the enormity it contains. He also argued that the imam should not say "Amen" when he says, {In the name of Allah, the All-Merciful, the Ever-Merciful}, on the grounds that Moses, peace be upon him, supplicated without saying "Amen," while Aaron said "Amen"—peace be upon them both—and that the Most High therefore called them both supplicants in His words, {He said: Your supplication, both of you, has been answered; so remain upright, both of you, and do not follow the way of those who do not know.} Abu Muhammed said: This argument contains its full measure of insipidity, dullness, worthlessness, and brazen ugliness. For the first thing to say to him is: Who told you that Moses, peace be upon him, supplicated without saying "Amen," and that Aaron said "Amen" without supplicating? This is merely something that some exegetes said without a chain of transmission to the Prophet ﷺ. Something of this kind may be accepted only from the Prophet ﷺ, or from an entire body transmitting from another such body, back to the events in question. Whoever lacks these two avenues lacks the truth, and has nothing left in his hands but brazen lying and pursuing that of which he has no knowledge—or having it transmitted from the accursed Iblis, for he undoubtedly witnessed all those events, except that he is not trustworthy. Then it is said to him: This is so even if what you claimed—that Moses supplicated without saying "Amen," and that Aaron said "Amen" without supplicating—were established: what in this would invalidate the Prophet's ﷺ statement concerning the imam, "When he says 'Amen,' say 'Amen,'" or the transmitter's statement that the Prophet ﷺ, while serving as imam, would say "Amen" when he finished the Mother of the Quran in prayer? Moreover, perhaps Moses said "Amen" when he supplicated; perhaps Aaron supplicated when Moses supplicated, and both said "Amen," or one of them said "Amen," or neither of them said "Amen." The express text of the Quran entails that they both supplicated, in His words, {He said: Your supplication, both of you, has been answered; so remain upright, both of you, and do not follow the way of those who do not know.} There is no evidence in the Quran that either both of them or one of them said "Amen." Has anyone ever heard an argument more insipid or more worthless than this, or of anyone more helpless in argument or more dull in his obfuscation than someone who argues

يبق بيده إلا المجاهرة بالكذب وأن يقفو ما ليس له به علم، أو أن يروى ذلك عن إبليس الملعون، فإنه قد أدرك لا محالة تلك المشاهد كلها إلا أنه غير ثقة، ثم يقال له: هذا لو صح لك ما ادعيت من أن موسى دعا ولم يؤمن، وأن هارون أمن ولم يدع فأي شيء في هذا مما يبطل قول النبي صلى الله عليه وسلم عن الإمام وإذا أمن فأمنوا وقول الراوي أن النبي صلى الله عليه وسلم وهو الإمام كان يقول إذا فرغ من أم القرآن في الصلاة آمين هذا ولعل موسى قد أمن إذ دعا، ولعل هارون دعا إذ دعا موسى وأمنا، أو أمن أحدهما، أو لم يؤمن واحد منهما، ونص القرآن يوجب أنهما دعوا معا بقوله تعالى {قال قد أجيبت دعوتكما فستقيما ولا تتبعآن سبيل لذين لا يعلمون} وليس في القرآن دليل على تأمين وقع منهما ولا من أحدهما، فهل سمع بأغث من هذا الاحتجاج أو أسقط منه، أو أقل حيلة أو أبرد تمويها ممن يحتج بمثله في إبطال السنن الثابتة ثم قال له: من عجائب الدنيا أنك جعلت فعل موسى وهارون الذي لم يصح قط ناسخا لقول محمد صلى الله عليه وسلم الصحيح في التأمين وهذا عكس الحقائق وقد كنا نعجب من قول شيخ من شيوخهم أدركناه مقدما في مشاورة القضاة له على جميع مفتيهم، فإن ذلك الشيخ قال في كتاب ألفه وقد رأيناه ووقفنا عليه وناولناه بيده، وهو مكتوب كله بخطه، وأقر لنا بتألفه وقرأه غيرنا عليه، فكان في بعض ما أورد فيه أن قال: روينا بأسانيد صحاح إلى التوراة أن السماء والأرض بكتا على عمر بن عبد العزيز أربعين سنة. قال أبو محمد: هذا نص لفظه، فلا أعجب من الشيخ المذكور في أن يروي عن التوراة شيئا من أخبار عمر بن عبد العزيز وهذا إسماعيل يبطل قول النبي صلى الله عليه وسلم إذا أمن يعني الإمام فأمنوا وتأمينه عليه السلام وهو الإمام بما لم يصح من ترك موسى للتأمين وترك هارون للدعاء. واحتجوا أيضا في إباحة قتل المسلمين وسفك الدماء المحرمة بدعوى المريض أن فلانا قتله ورسول الله صلى الله عليه وسلم

with its like to invalidate established prophetic practices? Then he said to him: Among the wonders of the world is that you have made an action of Moses and Aaron, which has never been authentically established, abrogate Muhammed's ﷺ authentic statement concerning saying "Amen." This is a reversal of realities. We used to marvel at a statement by one of their elders whom we knew, whom judges preferred to consult above all their other muftis. That elder said in a book he composed—we have seen it and examined it, and we handed it to him with his own hand; it was written entirely in his handwriting, he acknowledged to us that he had composed it, and someone other than us read it aloud to him—among the things he included in it, he said: "We have transmitted, through authentic chains of transmission reaching the Torah, that heaven and earth wept over Umar ibn Abd al-Aziz for forty years." Abu Muhammed said: These are his exact words. There is, then, nothing more astonishing about the aforementioned elder's transmitting from the Torah something concerning Umar ibn Abd al-Aziz, when here is Ismail invalidating the Prophet's ﷺ statement, "When he"—meaning the imam—"says 'Amen,' say 'Amen,'" and his own saying "Amen," peace be upon him, while serving as imam, on the basis of the unauthenticated account that Moses refrained from saying "Amen" and Aaron refrained from supplicating. They also argued for permitting the killing of Muslims and the shedding of inviolable blood on the strength of a sick person's allegation that so-and-so killed him, although the Messenger of Allah ﷺ says, "If people were granted their claims merely on their allegations, men would lay claim to other people's blood and property." Yet they permitted this on the sick person's allegation, arguing from what some exegetes mentioned: that when

يقول لو أعطي قوم بدعواهم لادعى رجال دماء قوم وأموالهم فأباحوا ذلك بدعوى المريض. واحتجوا بما ذكر بعض المفسرين من أن المقتول من بني إسرائيل لما ضرب ببعض البقرة حيي وقال: فلان قتلني.

the murdered man among the Children of Israel was struck with part of the cow, he came to life and said, “So-and-so killed me.”[1][2][3][4]

L2270–2271 Abu Muhammed said: This is not in the express text of the Quran. It contains only mention of the killing of a person, the mutual accusations concerning it, the slaughtering of the cow, and striking him with part of it, and that thus Allah brings the dead to life. Whoever adds to what we have mentioned in interpreting this verse has lied and claimed something of which he has no knowledge. How much worse, then, to deem inviolable blood lawful on that basis and grant a claimant his claim merely on his allegation, when Allah Most High has forbidden this! Who is more astonishing than someone who, in such momentous matters, argues from fables of the Children of Israel that appear neither in an express text, nor in transmission by an entire body, nor in a report with a chain of transmission to the Messenger of Allah ﷺ

L2272–2279 This, despite the fact that that fable contains no mention whatsoever of the collective oath procedure in homicide cases, nor of the rule that only two or more persons may swear in that procedure. Where, then, did these additions come from? Allah is sufficient for us, and an excellent Trustee is He. Then he turned to His words, Most High, {And We prescribed for them

قال أبو محمد: وهذا ليس في نص القرآن، وإنما فيه ذكر قتل النفس والتدارىء فيها، وذبح البقرة وضربه ببعضها، وكذلك يحيي الله الموتى فمن زاد على ما ذكرنا في تفسير هذه الآية، فقد كذب وادعى ما لا علم لديه، فكيف أن يستبيح بذلك دما حراما ويعطي مدعيا بدعواه، وقد حرم الله تعالى ذلك، فمن أعجب ممن يحتج بخرافات بني إسرائيل التي لم تأت في نص ولا في نقل كافة ولا في خبر مسند إلى رسول الله صلى الله عليه وسلم في مثل هذه العظائم

هذا مع أن تلك الخرافة ليس فيها ذكر قسامة أصلا، ولا أنه لا يحلف في القسامة إلا اثنان فصاعدا، فهذه الزوائد من أين خرجت؟ وحسبنا الله ونعم الوكيل. ثم أتى إلى قوله تعالى {وكتبنا عليهم فيها أن لنفس بلنفس ولعين بلعين ولأنف بلأنف ولأذن بلأذن ولسن بلسن ولجروح قصاص فمن تصدق به فهو كفارة له ومن لم يحكم بما أنزل لله فأولئك هم لظالمون} فقال لا نأخذ بها ولا نقتل مؤمنا بكافر ولا حرا بعبد، لأن هذا من شرائع من كان قبلنا، ونسي أخذه في القسامة بخرافة مروية عن بني إسرائيل وترك لها فعل النبي صلى الله عليه وسلم في القسامة ثم ترك ههنا نص الله تعالى في أنه كتب عليهم أن النفس بالنفس. وأعلى ما روي في حديث بقرة بني إسرائيل فحديث حدثناه أحمد بن عمر، ثنا عبد الله بن حسين بن عقال، نا إبراهيم بن محمد الدينوري، نا محمد بن الجهم، ثنا أبو بكر الوراق، نا علي بن عبد الله هو ابن المديني وعياش بن الوليد قال علي: نا يحيى بن سعيد، وسفيان بن عيينة، قال يحيى: نا ربيعة بن كلثوم، حدثني أبي عن سعيد بن جبير، أن ابن عباس قال: إن أهل المدينة من بني

[1] **Translator’s note (L2265):** The Arabic uses the singular «شيخ» (“elder”) after the two names Hillal and Shammay; that grammatical irregularity is retained. The supplied spelling «هلال» is rendered “Hillal” rather than silently normalized to “Hillel.”

[2] **Translator’s note (L2266):** The opening salutation completes a reference to the Prophet in the preceding context. The supplied text expressly quotes the opening invocation, “In the name of Allah, the All-Merciful, the Ever-Merciful,” in the discussion of saying “Amen”; it has been retained without substituting another passage. “Who have the status of having been married” renders the legal qualification muḥṣanīn; it is not merely a description of their marital status at the time of the offense.

[3] **Translator’s note (L2268):** “The Mother of the Quran” is the designation used here for the opening chapter, al-Fātiḥah.

[4] **Translator’s note (L2269):** The phrase rendered “we handed it to him with his own hand” is awkward in the supplied Arabic: nāwalnāhu bi-yadihi. The apparent mismatch of agent and possessive has been retained rather than silently changed to “he handed it to us.” The supplied text says “Then he said to him,” although the surrounding polemic otherwise presents the author’s own address to his opponent.

therein: a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and retaliation for wounds. Whoever relinquishes it as charity, it is an expiation for him. And whoever does not judge by what Allah has sent down—those are the wrongdoers.} He said: "We do not adopt this, nor do we put a believer to death for an unbeliever, or a free person for a slave, because this belongs to the revealed laws of those who came before us." He forgot that, in the collective oath procedure, he had adopted a fable related from the Children of Israel and, for its sake, abandoned the Prophet's ﷺ practice concerning that procedure. Then here he abandoned Allah Most High's express text stating that He prescribed for them a life for a life. The highest-reaching report transmitted concerning the cow of the Children of Israel is a report which Ahmad ibn Umar related to us: Abdullah ibn Husayn ibn Iqal related to us: Ibrahim ibn Muhammed al-Dinawari related to us: Muhammed ibn al-Jahm related to us: Abu Bakr al-Warraq related to us: Ali ibn Abdullah—that is, Ibn al-Madini—and Ayyash ibn al-Walid related to us. Ali said: Yahya ibn Said and Sufyan ibn Uyaynah related to us. Yahya said: Rabiah ibn Kulthum related to us: My father related to me, from Said ibn Jubayr, that Ibn Abbas said: "The inhabitants of a town among the Children of Israel found an old man murdered at the base of their town. The inhabitants of another town came and said, 'You killed our companion!' A young nephew of his was weeping. They came to Moses, peace be upon him, and Allah revealed to him, {And when Moses said to his people: Allah commands you to slaughter a cow. They said: Do you make a mockery of us? He said: I seek refuge in Allah from being one of the ignorant.}" He then related the account of the cow at length. At its end: "They brought the cow until they reached the old man's grave with it, while his nephew stood beside his grave. They slaughtered it, and the grave was struck with a piece of its flesh. The old man rose, shaking his head and saying, 'My nephew killed me. My life had grown too long for him, and he wanted to consume my property.' Then he died." Sufyan said: Ibn Suqah related to us: I heard Ikrimah say: "The Children of Israel had a place of worship with twelve gates. They found a murdered man who had been killed at one gate, so they dragged him to another gate. Then they brought their dispute before Moses, peace be upon him, and he said,

إسرائيل وجدوا شيخا قتيلا في أصل مدينتهم، فأقبل أهل مدينة أخرى فقالوا: قتلتم صاحبنا وابن أخ له شاب يبكي، فأتوا موسى عليه السلام فأوحى الله إليه {وإذ قال موسى لقومه إن الله يأمركم أن تذبحوا بقرة قالوا أتتخذنا هزوا قال أعوذ بالله أن أكون من الجاهلين} فذكر حديث البقرة بطوله وفي آخره فأقبلوا بالبقرة حتى انتهوا بها إلى قبر الشيخ وابن أخيه قائم عند قبره، فذبحوها فضرب ببضعة من لحمها القبر، فقام الشيخ ينفض رأسه ويقول: قتلني ابن أخي، طال عليه عمري وأراد أكل مالي ومات. وقال سفيان: ثنا ابن سوقة، سمعت عكرمة يقول: كان لبني إسرائيل مسجد له اثنا عشر بابا، فوجدوا قتيلا قد قتل على باب، فجروه إلى باب آخر، فتحاكموا إلى موسى عليه السلام فقال {وإذ قال موسى لقومه إن الله يأمركم أن تذبحوا بقرة قالوا أتتخذنا هزوا قال أعوذ بالله أن أكون من الجاهلين} فذبحوها فضربوه بفخذها فقام فقال: قتلني فلان، وكان رجلا له مال كثير، وكان ابن أخيه قتله، وقال عياش بن الوليد، نا يزيد بن زريع، نا سعيد، عن قتادة قال: كان قتيل في بني إسرائيل فأوحى الله عز وجل إلى موسى، أن اذبح بقرة فاضربوه ببعضها، فذكر لنا أنهم ضربوه بفخذها، فأحياه الله عز وجل، فأنبأ بقاتله وتكلم ثم مات. وذكر لنا أنهم وليه الذي كان يطلب بدمه هو قتله من أجل ميراث كان بينهم، فلا يورث قاتل بعده. وبه إلى ابن الجهم، ثنا محمد بن مسلمة، ثنا يزيد بن هارون، أنبأ هشام عن محمد بن سيرين، عن عبيدة السلماني قال: كان في بني إسرائيل رجل عقيم لا يولد له، وكان له مال كثير، وكان ابن أخيه وارثه فقتله، ثم احتمله ليلا حتى أتى به في آخرين فوضعه على باب رجل منهم، ثم أصبح يدعيه عليهم، فأتوا موسى عليه السلام فقال {وإذ قال موسى لقومه إن الله يأمركم أن تذبحوا بقرة قالوا أتتخذنا هزوا قال أعوذ بالله أن أكون من الجاهلين} فذبحوها فضربوه ببعضها فقام فقالوا: من قتلك؟ فقال: هذا، لابن أخيه، ثم مال ميتا فلم يعط ابن أخيه من ماله شيئا، ولم يورث قاتل بعده. وبه إلى ابن الجهم. حدثنا محمد الفرج، وإبراهيم بن

{And when Moses said to his people: Allah commands you to slaughter a cow. They said: Do you make a mockery of us? He said: I seek refuge in Allah from being one of the ignorant.} They slaughtered it and struck him with its thigh. He rose and said, 'So-and-so killed me.' He was a man with considerable wealth, and his nephew had killed him." Ayyash ibn al-Walid said: Yazid related to us ibn Zurayʿ: Saʿid related to us, from Qatadah, who said: There was a slain man among the Children of Israel, and Allah, mighty and majestic, revealed to Moses: "Slaughter a cow, then strike him with part of it." We were told that they struck him with its thigh, whereupon Allah, mighty and majestic, brought him to life. He identified his killer and spoke, then died. We were told that his next of kin, who was demanding vengeance for his blood, was the one who had killed him, on account of an inheritance between them. No killer was allowed to inherit after him. Through the same chain to Ibn al-Jahm: Muhammed ibn Maslamah related to us; Yazid ibn Harun related to us; Hisham informed us, from Muhammed ibn Sirin, from ʿAbidah al-Salmani, who said: Among the Children of Israel there was a childless man who could father no children. He had considerable wealth, and his brother's son was his heir. His nephew killed him, then carried him by night until he brought him among other people and laid him at the door of one of their men. In the morning he accused them of his murder. They came to Moses, peace be upon him, and he said: {And when Moses said to his people, "Indeed, Allah commands you to slaughter a cow," they said, "Do you take us in mockery?" He said, "I seek refuge in Allah from being one of the ignorant."} They slaughtered it and struck him with part of it, whereupon he stood up. They asked, "Who killed you?" He said, "This one," referring to his brother's son. Then he fell over dead. His brother's son was given none of his wealth, and no killer was allowed to inherit after him. Through the same chain to Ibn al-Jahm: Muhammed al-Faraj and Ibrahim ibn Ishaq al-Harbi related to us. Muhammed said—and the wording is his—Hajjaj related to us, from Ibn Jurayj, from Mujahid, who said: The man involved in the affair of the cow was a man of the Children of Israel whom another man killed. Then he related the substance of the account. Al-Harbi said: Husayn ibn al-Aswad related to us; ʿAmr ibn Muhammed related to us; Asbat related to us, from al-Suddi, to similar effect. We have

إسحاق الحربي قال محمد: واللفظ له: ثنا حجاج، عن ابن جريج، عن مجاهد قال: صاحب البقرة رجل من بني إسرائيل قتله رجل ثم ذكر معناه. وقال الحربي: نا حسين بن الأسود، نا عمرو بن محمد، نا أسباط، عن السدي نحوه. وروينا أيضا نحوه من طريق إسماعيل بن إسحاق، عن عبد الله بن إسماعيل، عن عبد الرحمن بن زيد بن أسلم. قال أبو محمد: وهذه مرسلات وموقوف لو أتت فيما أنزل علينا ما جاز الاحتجاج بها أصلا، فكيف فيما أنزل في غيرنا؟ وليس في القرآن نص بشيء مما ذكر في هذه الأخبار أكثر من أنهم تدارؤوا في نفس مقتولة منهم، فأمرهم عز وجل أن يذبحوا بقرة فيضربوه ببعضها {فقلنا ضربوه ببعضها كذلك يحيي الله لموتى ويريكم آياته لعلكم تعقلون} ولم يقل تعالى في القرآن إن الميت قال: فلان قتلني، ولا أنه صدق في ذلك، ولا أنه أقيد به، وكل من زاد على ما في القرآن شيئا بغير نص من الرسول صلى الله عليه وسلم فقد أتى عظيمة وحتى لو صح كل هذا لما كانت فيه حجة أصلا، لأن ذلك كان يكون معجزة، وإحياء ميت، ومن عاد من الآخرة فلا شك في أنه لا يقول إلا الحق، وأما الأحياء فيما بيننا فالكذب غير مأمون عليهم، ودعوى الباطل وهم لا يصدقونه، في درهم يدعيه ولا في درهم يقر به لوارث، ويصدقونه في الدم الذي يوجب قتل عدوه عندهم، أو أخذ ماله في الدية. ونحن الآن إن شاء الله تعالى نذكر كل ما في القرآن من شرائع النبيين عليهم السلام قبلنا، ونبين ما اتفق على تركه منها، وما اختلف في الأخذ منها، ثم نذكر إن شاء الله تعالى حجج الآخذين بها، والمانعين منها، وبالله تعالى التوفيق. فمن شرائع سليمان عليه السلام قول الله تعالى {قال أبو محمد وهذا لا خلاف بيننا في سقوط عقاب الطير وإن أفسدت علينا ومنها قوله تعالى {} قال أبو محمد هذا مما اختلف فيه فادعى قوم فيها دعاوى من أن سليمان عليه السلام كلف أصحاب الغنم جبر ما أفسدت من الزرع أو الكرم ليلا وهذا باطل لأنه ليس ذلك في الآية ولا صح عن النبي صلى الله عليه وسلم وإنما ذكر في بعض التفاسير

also transmitted something similar through Isma'il ibn Ishaq, from 'Abd Allah ibn Isma'il, from 'Abd al-Rahman ibn Zayd ibn Aslam. Abu Muhammed said: These are reports with omitted links to the Prophet and a report stopping short of him. Even if they concerned what was revealed to us, adducing them as evidence would not be permissible at all. How, then, when they concern what was revealed among others? The Quran contains no explicit statement of anything mentioned in these reports beyond their disputing over a person slain among them, whereupon He, mighty and majestic, commanded them to slaughter a cow and strike him with part of it: {Then We said, "Strike him with part of it." Thus Allah brings the dead to life and shows you His signs, so that you may understand.} The Exalted did not say in the Quran that the dead man said, "So-and-so killed me," nor that he spoke truthfully in that, nor that retaliatory punishment was exacted on his account. Anyone who adds anything to what is in the Quran without an explicit text from the Messenger, may Allah bless him and grant him peace ﷺ, has committed a grave offense. Even if all this were authentic, it would contain no evidence whatsoever, because that would have been a miracle and the bringing of a dead man to life. Whoever has returned from the Hereafter undoubtedly speaks only the truth. As for the living among us, they cannot be trusted to refrain from lying and making false claims. Yet they do not believe him concerning a dirham he claims, nor concerning a dirham he acknowledges as belonging to an heir, while they believe him concerning bloodshed, which, in their view, entails killing his enemy or taking his wealth as blood money. We shall now, if Allah the Exalted wills, mention everything in the Quran concerning the laws of the prophets before us, peace be upon them, and explain which of those laws are unanimously agreed to be abandoned and which are disputed as to their adoption. Then we shall mention, if Allah the Exalted wills, the arguments of those who adopt them and those who prohibit their adoption. Through Allah the Exalted comes success. Among the laws of Solomon, peace be upon him, is the saying of Allah the Exalted: {Abu Muhammed said: Concerning this, there is no disagreement among us that punishment of birds is inapplicable, even if they cause us damage. Another is His saying, exalted is He: {}. Abu Muhammed said: This is among the matters disputed. Some people made claims about it, namely that Solomon, peace be

التي لا تصح وذلك من نحو ما ذكر فيها أن ملكين زنيا وقتلا النفس التي حرم الله تعالى وشربا الخمر وقد نزه الله تعالى الملائكة عن ذلك وأن الزهرة كانت زانية فمسخت كوكبا مضيئا يهتدى به في البر والبحر حتى أدت هذه الروايات الفاسدة بعض أهل الإلحاد إلى أن قال: لو كان هذا لما بقيت محصنة إلا زنت لتمسخ كوكبا, والتي ذكر فيها أن يوسف عليه السلام, قعد من امرأة العزيز, مقعد الرجل من امرأته, وقد نزه الله تعالى أنبياءه عن ذلك وهذا كثير جدا

upon him, required the owners of the sheep to make good the damage the sheep had caused to crops or vines by night. This is false, because that is not in the verse, nor has it been authentically transmitted from the Prophet, may Allah bless him and grant him peace ﷺ. It is mentioned only in certain Quran commentaries that are not authentic. It is like what is mentioned in them about two angels committing fornication, killing a person whose killing Allah the Exalted had forbidden, and drinking wine—though Allah the Exalted has declared the angels free of such things—and about al-Zuharah having been a woman who committed fornication and was transformed into a shining star by which people find their way on land and sea. These corrupt reports even led one of the proponents of unbelief to say: "If this were so, there would remain no chaste woman who would not commit fornication in order to be transformed into a star." And those in which it is mentioned that Joseph, peace be upon him, positioned himself with the wife of al-ʿAziz as a man positions himself with his own wife—though Allah the Exalted

has declared His prophets free of such things. Such material is exceedingly abundant.[5][6][7][8][9][10]

L2280–2281 The Messenger of Allah, may Allah bless him and grant him peace ﷺ, has stated that injury inflicted by a dumb animal entails no liability. The report concerning al-Bara''s she-camel has no connected chain of transmission whatsoever; rather, its chain is interrupted through every route. Among the laws of Zechariah, peace be upon him, is His saying, exalted is He: {}. This is rendered inapplicable by what is transmitted from the Prophet, may Allah bless him and grant him peace ﷺ, of his saying: "I shall certainly remain silent for a day until nightfall." In general, we have not been commanded to remain silent. Whoever refrains from speech other than obligatory speech and recommended remembrance has done well. Another is His saying, exalted is He: {}. Some people adduced this as evidence for deciding by lot, then

وقد أخبر رسول الله صلى الله عليه وسلم أن جرح العجماء جبار ولا ينسند حديث ناقة البراء أصلا وإنما هو منقطع من جميع جهاته. ومن شريعة زكريا عليه السلام قوله تعالى {} وهذا ساقط بما روي عن النبي صلى الله عليه وسلم من قوله لأصمت يوما إلى الليل وبالجملة فلم نؤمر بالصمت، ومن صمت عن غير الواجب من الكلام والمستحب من الذكر فقد أحسن ومنها قوله تعالى {} فاحتج بهذا قوم في الحكم بالقرعة ثم جعلوا ذلك حكما في المستلحق من الأولاد، وفي المشكوك في طلاقها من النساء وفي غير ذلك، وهذا لا يلزم بل يبطل من وجهين: أحدهما: أن هذا قياس والقياس باطل. والثاني: أنه غير مأمور به في شريعتنا ومن شرائع موسى عليه السلام قوله تعالى {} ونحن لا نخلع نعالنا في الأرض المقدسة ومنها قوله تعالى {} قال أبو محمد وهذا لا خلاف في أنه منسوخ وأن الله تعالى قد أحل لهم كل ذلك على لسان محمد صلى الله عليه وسلم بقوله {} وهذه الشحوم من طعامنا فهن حل لهم وإن رغمت أنوفهم وأنوف المجتنبين لها اتباعا لدعوى اليهود في تحريم ذلك

[5] **Translator's note (L2272):** "The collective oath procedure in homicide cases" renders qasāmah throughout this passage. "Highest-reaching" renders aʿlā, a term concerning a transmission chain's elevation or proximity to its source; the wording does not itself certify the report as authentic. "At the base of their town" preserves the unusual location expressed by fī aṣl madīnatihim.

[6] **Translator's note (L2275):** The segment begins in the middle of a transmission chain; "ibn Zurayʿ" continues the name in the preceding segment. The wording "أنهم وليه" is syntactically irregular. The translation reflects the apparent sense that the victim's next of kin was his killer. The Quran quotation has defective spellings in "إن لله" "بلله" and "لجاهلين." The intended words are recognizable; these defects do not yield a distinct translatable meaning. "Reports with omitted links to the Prophet" renders marāsīl; "a report stopping short of him" renders mawqūf. The Arabic combines a plural and a singular.

[7] **Translator's note (L2276):** The quotation continues from the preceding segment. "ضربوه" appears without the initial alif of the expected imperative "اضربوه"; the translation follows its apparent imperative sense in context. "لله" and "لموتى" also have defective spellings.

[8] **Translator's note (L2278):** The opening Quran citation after "the saying of Allah the Exalted" is missing: the source supplies only an opening brace before resuming the author's commentary. The subsequent empty braces likewise mark an absent quotation. No verses have been supplied. Al-Zuharah is the name of Venus, here also used as the name of the woman in the story.

[9] **Translator's note (L2279):** "Those" refers back to the Quran commentaries mentioned in the preceding segment. The opening words complete the quotation begun there.

[10] **Qur'an references (L2272):** Qur'an 5:45 (Al-Ma'idah); Qur'an 2:67 (Al-Baqarah).

made this a ruling applicable to children whose paternity someone claims, to women whose divorce is uncertain, and to other matters. This does not follow; rather, it is invalid on two grounds. The first is that this is analogy, and analogy is invalid. The second is that it is not commanded in our revealed law. Among the laws of Moses, peace be upon him, is His saying, exalted is He: {}. We do not take off our sandals in the Holy Land. Another is His saying, exalted is He: {}. Abu Muhammed said: There is no disagreement that this is abrogated, and that Allah the Exalted has made all of that lawful for them through the tongue of Muhammed, may Allah bless him and grant him peace ﷺ, by His saying: {} These fats are part of our food, so they are lawful for them, even though their noses—and the noses of those who avoid them in adherence to the Jews' claim that this is forbidden—be rubbed in the dust.[11][12]

L2282 Another is His saying, exalted is He: {}. Abu Muhammed said: As for us, we do not adopt this, because we were not commanded to do so; only others were commanded to do so. We have required retaliation in all these cases, and in cases of lesser injury, between Muslims themselves, and have treated the free person and the slave, the male and the female, equally in all of this, on the basis of His saying, exalted is He, addressing us: {}; His saying, exalted is He, addressing us: {}; His saying, exalted is He: {}; and the saying of the Messenger of Allah, may Allah bless him and grant him peace ﷺ: "The believers' blood is of equal worth." Thus, in all of this, we have exacted retaliation against a free man on behalf of a free man and a male slave, a free woman and a female slave. We have exacted retaliation against a male

ومنها قوله تعالى {} قال أبو محمد أما نحن فلا نأخذ بهذا لأننا لم نؤمر به، وإنما أمر به غيرنا، وإنما أوجبنا القود في كل هذا، وفيما دونه بين المسلمين فيما بينهم، وساوينا في كل ذلك بين الحر والعبد، والذكر والأنثى بقوله تعالى مخاطبا لنا {} وبقوله تعالى مخاطبا لنا {} وبقوله تعالى {} ويقول رسول الله صلى الله عليه وسلم المؤمنون تتكافأ دماؤهم فأقدنا في كل ذلك من الحر للحر، والعبد للحرة والأمة وأقدنا من العبد للعبد، وللحر وللحرة، وللأمة وكذلك من الحرة والأمة ولا فرق، وأقدنا لكل من ذكرنا من الكافر، ولم نقد كافرا من مؤمن أصلا لقول الله تعالى {} وبقوله صلى الله عليه وسلم ولا يقتل مؤمن بكافر ومنها قوله تعالى {} وهذا منسوخ بإجماع ومنها قوله تعالى {} قال أبو محمد وهذا منسوخ بإجماع ومنها الأمر بذبح بقرة صفراء فاقع لونها، وهذا لا يلزم في شيء من الأحكام بإجماع ومن شريعة لوط عليه السلام {} ولا يحل في شريعتنا رجم المكذب بالنذر وقد احتج قوم في رجم من فعل فعل لوط بهذه الآية.

[11] **Translator's note (L2280):** All five Quran quotations are absent from the supplied text and are represented by empty braces. The transmitted saying is written "لأصمت يوما إلى الليل," which reads as an emphatic first-person statement, "I shall certainly remain silent for a day until nightfall." This conflicts with the author's argument. It apparently reflects corruption of "لا صمت يوما إلى الليل," meaning "There is to be no silence for a day until nightfall"; the supplied wording has been translated without silently repairing it. "ينسند" is an irregular form in the supplied text; its apparent sense here is having a connected transmission chain.

[12] **Translator's note (L2281):** Having one's nose rubbed in the dust is an expression of humiliation or defiance; the polemical wording is retained.

slave on behalf of a male slave, a free man, a free woman, and a female slave; likewise against a free woman and a female slave, without distinction. We have exacted retaliation against an unbeliever on behalf of everyone we have mentioned, but we have never exacted retaliation against a believer on behalf of an unbeliever, on the basis of the saying of Allah the Exalted: {}, and his saying, may Allah bless him and grant him peace ﷺ: "A believer shall not be killed for an unbeliever." Another is His saying, exalted is He: {}. This is abrogated by consensus. Another is His saying, exalted is He: {}. Abu Muhammed said: This is abrogated by consensus. Another is the command to slaughter a cow of a vivid yellow color. By consensus, this is not binding in any legal ruling. Among the laws of Lot, peace be upon him, is: {}. In our revealed law, it is not lawful to stone someone who rejects the warnings as false. Some people have adduced this verse as evidence for stoning someone who commits the act of Lot.[13]

L2283 Abu Ali said: They forgot that whoever committed that act among the people of Lot was an unbeliever, and that this is expressly stated in the Quran, in the very same verse, where the Exalted reports that they rejected the warnings, and that their children and women were stoned along with them, although they were not among those who committed that act. They also forgot His words, Exalted is He: {}. Thus, if they consistently applied their unsound principle, they would be obliged to "hand over their eye"—that of everyone who solicited a male to yield himself—because Allah, Exalted is He, obliterated the eyes of Lot's people when they solicited his guest, just as He stoned them when they approached males and disbelieved. Whoever distinguishes between any of these things has imposed an arbitrary judgment upon the religion of Allah, Mighty and Majestic, without demonstration or guidance from Allah, Exalted is He.

[13]**Translator's note (L2282):** All eight Quran quotations are absent from the supplied text and are represented by empty braces. The list following retaliation "against a free man" is syntactically awkward: "للحر والعبد للحرة والأمة." The translation preserves all four named categories while reflecting the author's stated equality among them. "The act of Lot" is the source's conventional expression for the act attributed to Lot's people, rather than an act attributed personally to the prophet.

قال أبو علي: ونسوا أن فاعل ذلك من قوم لوط كان كافرا، وذلك منصوص في القرآن في الآية نفسها إذ أخبر تعالى أنهم كذبوا بالنذر، وأن صبيانهم ونساءهم رجموا معهم، ولم يكونوا ممن فعل ذلك الفعل ونسوا أيضا قوله تعالى {} فكان يلزمهم إذا طردوا أصلهم الفاسد أن يسلموا عينهم كل من راود ذكرا عن نفسه، لأن الله تعالى طمس أعين قوم لوط إذ راودوا ضيفه، كما رجمهم لما أتوا الذكور وكفروا، فمن فرق بين شيء من ذلك فقد تحكم في دين الله عز وجل بلا برهان ولا هدى من الله تعالى ومن شريعة يوسف عليه السلام {} قال أبو محمد وهذا مما لا خلاف فيه أنه لا يجوز أن نحكم به الآن بين الناس في تداعيهم الزنى ومنها {} قال أبو محمد فاحتج قوم بهذا في إثبات الجعل وهذا لا يلزم لأن قول رسول الله صلى الله عليه وسلم أموالكم عليكم حرام مبطل للجعل إلا أن يوجبه نص في شريعتنا أو تطيب به نفس الجاعل ومنها قوله تعالى {} قال أبو محمد وهذا لا خلاف بيننا وبين خصومنا في أنه لا يحكم به بيننا، وأنه لا يسترق السارق لأجل سرقته، وكان يلزمهم القول به لأنه ليس مجمعا على

And among the laws of Joseph, peace be upon him: {}. Abu Muhammed said: This is something concerning which there is no disagreement: we may not now adjudicate by it among people in their competing allegations of unlawful sexual intercourse. Also among them: {}. Abu Muhammed said: Some people adduced this as evidence for establishing an entitlement to a stipulated reward. But this does not follow, because the words of Allah's Messenger, may Allah bless him and grant him peace ﷺ, "Your property is inviolable among you," invalidate such a stipulated reward unless a text in our revealed law makes it obligatory, or the person offering the reward willingly gives it. Also among them are His words, Exalted is He: {}. Abu Muhammed said: There is no disagreement between us and our opponents that this is not to be applied in adjudication among us, and that a thief is not to be enslaved on account of his theft. Yet they would be obliged to affirm it, because there is no consensus on abandoning it. Indeed, we have transmitted from Zurarah ibn Awfa, the judge, that he sold a free man for a debt. We have also transmitted [this] from al-Shafi'i through an unusual transmission route. This did exist in the early period of Islam, but was then abrogated by His words, Exalted is He: {}.[14]

L2284 And among the laws of Job, peace be upon him: {}.[15]

L2285–2286 Some people therefore adduced this as evidence for permitting the flogging of a person who commits unlawful sexual intercourse, a person who makes an accusation of unlawful sexual intercourse, and a drinker, when they are ill, [with something] in which they "limp"—one hundred, eighty, or forty stalks—and for fulfilling the oath of someone who swore that he would flog his male slave with such-and-such a number of lashes. Abu Muhammed said: Those who adduced as evidence their claim concerning the dead man's

[14]**Translator's note (L2283):** The empty braces mark absent quotations in the supplied text; their wording has not been supplied. The transmitted phrase أن يسلموا عينهم كل من راود is grammatically and semantically problematic. Its wording literally suggests "that they hand over their eye, everyone who solicited." The context appears to require gouging out the eyes of everyone who solicited a male, but the Arabic has not been silently emended.

[15]**Translator's note (L2284):** The empty braces mark an absent quotation in the supplied text.

تركه، بل قد روينا عن زرارة بن أوفى القاضي أنه باع حرا في دين، وروينا أيضا عن الشافعي من طريق غريبة، وقد كان ذلك في صدر الإسلام ثم نسخ بقوله تعالى {}

ومن شريعة أيوب عليه السلام {}

فاحتج بهذا قوم في إباحة جلد الزاني والقاذف والشارب إذا كانوا مرضى، يعرجون فيه مائة أو ثمانون أو أربعون شمراخا، وفي بر يمين من حلف ليجلدن غلامه كذا وكذا جلدة. قال أبو محمد: والذين احتجوا بدعواهم في كلام الميت في أمر بقرة بني إسرائيل أن فلانا قتلني، يأبون ههنا من أن يبرأ الحالف إذا ضرب بضغث، ويكفي هذا من قبيح التناقض وفاحشة، ونحن وإن كنا نرى الجلد بالضغث للمريض فإنما نجيزه من غير هذه الآية لكن من الحديث المأثور عن رسول الله صلى الله عليه وسلم أنه أمر أن يجلد المريض الذي زنى بعثكول فيه مائة شمراخ، ونرى البر يقع بما يقع عليه اسم جلد واسم ضرب ومن شريعة موسى وصهره عليهما السلام {} قال أبو محمد وبهذا يحتج من يبيح النكاح على إجارة إلى أحد أجلين لم يوقت أحدهما بعينه، وهذا

speech in the affair of the cow of the Children of Israel—"So-and-so killed me"—refuse here to allow that the person who swore the oath discharges it if he strikes with a bundle of stalks. This suffices as an instance of the ugliness and enormity of their contradiction. Although we hold that an ill person may be flogged with a bundle of stalks, we permit it on grounds other than this verse: rather, on the basis of the report transmitted from Allah's Messenger, may Allah bless him and grant him peace ﷺ, that he ordered the ill man who had committed unlawful sexual intercourse to be flogged with a date cluster containing one hundred stalks. We hold that an oath is fulfilled by whatever falls under the designation "flogging" and the designation "striking."

And among the laws of Moses and his father-in-law, peace be upon them both: {}. Abu Muhammed said: This is what those who permit marriage in exchange for hired service extending to one of two terms, without specifying either one individually, adduce as evidence. In our view and that of our opponents, this is impermissible, because a contract of hire whose term is unknown is invalid, since it constitutes consuming property wrongfully; and marriage contracted in exchange for something invalid is invalid. For anything whose validity depends upon the validity of something that is not valid is undoubtedly itself invalid. Especially so when that hired service benefits the person giving the woman in marriage, while the woman being married has no share in it. In our religion, the bridal payment belongs solely to the woman being married, by the explicit wording of Allah's words, Exalted is He: {}. Neither the father nor the guardian has any share in it. Among the wonders of the world is what Ahmad ibn Muhammed ibn al-Jasur related to us: Wahb ibn Masarrah related to us: Ibn Waddah related to us: Sahnun related to us: Ibn al-Qasim related to us, saying: Malik adduced as evidence for the permissibility of a man's action in marrying off his virgin daughter

عندنا وعند خصومنا لا يجوز، لأن الإجارة المجهولة الأجل فاسدة، لأنها أكل مال بالباطل، والنكاح على شيء فاسد، لأن كل ما لا يصح إلا بصحة ما لا يصح فلا شك في أنه لا يصح، لا سيما وتلك الإجارة للمنكح لا حظ فيها للمنكحة، والصداق في ديننا إنما هو للمنكحة بنص قول الله تعالى {} ولا حظ فيها للأب ولا للولي ومن عجائب الدنيا ما حدثنا أحمد بن محمد بن الجسور، ثنا وهب بن مسرة، ثنا ابن وضاح، ثنا سحنون، ثنا ابن القاسم قال: احتج مالك في جواز فعل الرجل بإنكاح ابنته البكر بغير رضاها بقول الله تعالى عن صهر موسى {}

without her consent, Allah's words, Exalted is He, concerning Moses' father-in-law: {}.[16][17]

L2287–2289 Ali said: What wonder could be more astonishing than his adducing this verse as evidence for something that is not in the verse at all? It is possible that she consented and that this was simply not mentioned. Then he contradicts the very same verse on four points. The first is giving "one of my two daughters" in marriage without specifying her individually. The second is giving her in marriage in exchange for hired service. The third is that the hired service extends to one of two terms: whichever he completes, the marriage remains established. The fourth is giving a woman in marriage in exchange for service to her father. Then, after all this, who can establish for him that she was a virgin? Perhaps she was previously married. Is there not in this argument a lesson for anyone who takes heed? Perhaps she was a virgin who had remained unmarried beyond the usual age, and he does not hold that such a woman may be married off except with her permission and consent. How, then, can this stand, when adducing the verse as evidence is itself unsound, for the reason we have already given: the revealed laws of the prophets, peace be upon them, are not binding upon us?

Among the laws of al-Khidr, peace be upon him, are His words, Exalted is He: {}. Then He said: {}. Abu Muhammed said: There is no disagreement within our revealed law that it is unlawful to kill a boy out of fear that he might overwhelm his parents with transgression and unbelief. And among the laws of Noah, peace be upon him: {}. Abu Muhammed said: The Azariqah adopted this and deemed the killing of children lawful. They failed to notice that Noah's words, peace be upon him, concerned only the unbelievers who lived in his own time, whom Allah, Exalted is He, destroyed, leaving them

قال علي فأي عجب أعجب من احتجاجه بهذه الآية فيما لا يوجد في الآية أصلا، وفي الممكن أنها رضيت فلم يذكر، ثم يخالف الآية نفسها في أربعة مواضع: أحدهما: إنكاح إحدى ابنتي بغير عينها. والثاني: إنكاحه بإجارة. الثالث: الإجارة إلى أحد أجلين أيهما أوفى فالنكاح ثابت. والرابع: إنكاح امرأة بخدمة أبيها. ثم بعد هذا كله: من له بأنها كانت بكرا؟ ولعلها ثيب، أليس في هذا الاحتجاج عبرة لمن اعتبر، ولعلها بكر عانس وهو لا يرى إنكاح هذه إلا بإذنها ورضاها، فكيف والاحتجاج بالآية لا يصح لما قدمنا من أن شرائع الأنبياء عليهم السلام لا تلزمنا، ومن شرائع الخضر عليه السلام قوله تعالى {} ثم قال {} قال أبو محمد ولا خلاف في شريعتنا أنه لا يحل قتل غلام خوف أن يرهقهما طغيانا وكفرا ومن شريعة نوح عليه السلام {} قال أبو محمد فأخذ بهذا الأزارقة واستباحوا قتل الأطفال وغاب عنهم أن قول نوح عليه السلام إنما كان فيمن كان في عصره من الكفار فقط، الذين أهلكهم الله تعالى ولم يبق لهم نسلا بقوله تعالى {} وبقوله تعالى {} ولم يحمل نوح مع نفسه عليه السلام إلا المؤمنين فقط من قومه وولده وغاب عنهم بجهلهم أن رسول الله صلى الله عليه وسلم سيد ولد آدم هو ولد كافر وكافرة وأن عمر كذلك، وقد قال عليه السلام: أو ليس خياركم أولاد المشركين، ونحن نترك الكفار ولا نقتلهم، بل نأخذ منهم الجزية، وننكح إليهم ونعاملهم، ونأكل ذبائحهم، ولا نستحل قتل طفل من أطفال أهل الحرب عمدا، بل يهديهم الله بنا، ولا يضلوننا والحمد لله رب العالمين، وقد نقل كافة بني إسرائيل أن موسى عليه السلام قتل صبيان أهل مدين، وقتل يوشع صبيان أهل أريحا الأطفال بأمر الله تعالى بذلك، وهذا في شريعتنا غير جائز ومن شريعة يونس عليه السلام قوله تعالى {} قال أبو محمد فاحتج بهذا قوم في الحكم بالقرعة وقد مضى الكلام في ذلك ولا

[16] **Translator's note (L2285):** The phrase يعرجون فيه مائة أو ثمانون أو أربعون شمراخا is corrupt or incomplete as supplied. يعرجون ordinarily means "they limp" or "they ascend"; the surrounding argument concerns a bundle containing a specified number of stalks. The translation marks the difficulty rather than substituting an unattested corrected reading. The empty braces mark absent quotations in the supplied text. The final sentence continues in the next unit.

[17] **Translator's note (L2286):** This unit continues the sentence begun in the preceding unit. The empty braces mark an absent quotation in the supplied text.

no descendants, by His words, Exalted is He: {}, and by His words, Exalted is He: {}. Noah, peace be upon him, took along with himself only the believers among his people and his offspring. In their ignorance, they failed to notice that Allah's Messenger, may Allah bless him and grant him peace ﷺ, the master of Adam's descendants, was the son of an unbelieving man and an unbelieving woman, and that Umar was likewise. He also said, peace be upon him: "Are not the best among you the children of polytheists?" We leave the unbelievers alive and do not kill them; rather, we collect the poll tax from them, marry into their communities, transact with them, and eat the animals they slaughter. We do not deem it lawful deliberately to kill any child among the children of people at war with us; rather, He guides them —Allah—through us, and they do not lead us astray. Praise belongs to Allah, Lord of the worlds. The entirety of the Children of Israel have transmitted that Moses, peace be upon him, killed the children of the people of Midian, and that Joshua killed the young children of the people of Jericho, at Allah's command, Exalted is He. This is impermissible in our revealed law.

Among the laws of Jonah, peace be upon him, are His words, Exalted is He: {}. Abu Muhammed said: Some people adduced this as evidence for adjudicating by drawing lots. Discussion of this has already preceded, and there is no disagreement among any of us that it is impermissible for anyone to be cast into the sea by the drawing of lots. And among the laws of Mary, peace be upon her: {}. This is not among the conditions of fasting in our view. Among Allah's laws, Exalted is He, for the Children of Israel are His words, Exalted is He: {}. Yet we transgress often and are not transformed in shape; praise belongs to Allah. Among the laws of the people of Zechariah's time, peace be upon him, are the words of Mary's mother: {}. Abu Muhammed

خلاف بين أحد منا أنه لا يجوز أن يلقى أحد في البحر بالقرعة ومن شريعة مريم عليها السلام {} وليس هذا من شرط الصوم عندنا ومن شرائع الله تعالى في بني إسرائيل قوله تعالى {} ونحن نعتدي كثيرا فلا نمسخ ولله الحمد ومن شريعة أهل زمان زكريا عليه السلام قول أم مريم {} قال أبو محمد وهذا غير جائز عندنا أصلا ومن شريعة يعقوب عليه السلام {}

said: This is entirely impermissible in our view. And among the laws of Jacob, peace be upon him: {}.[18][19][20]

L2290 Abu Muhammed said: This is unlawful in our view. No one may declare forbidden to himself what Allah, Mighty and Majestic, has not forbidden to him. Nevertheless, groups of our scholars have disagreed over declaring one's wife or female slave forbidden: some affirmed it, while others disallowed it. We uphold its disallowance. No one may declare a wife or anything else forbidden, and she does not thereby become forbidden; nor does this constitute divorce, nor is there any expiation for it. She remains lawful to him as she was before, and the same applies to all the rest of his property. And among the laws of the Children of Israel: {}.[21]

L2291 Abu Muhammed said: This is not binding upon us. Among the laws of Adam, peace be upon him, are His words: {}. Abu Muhammed said: There is no disagreement that, in our view, it is impermissible to seek adjudication by sacrificial offerings. Nor is it lawful, in our view, to submit to being killed unjustly; rather, someone killed defending his own life is a martyr. And among the laws of the people of the two Scriptures in the time of the Companions of the Cave: {}. Abu Muhammed said: This is forbidden in our revealed law. He said, peace be upon him: "Those people, whenever a righteous man among them died, would build a place of worship over his grave. Those are the worst of creation." Abu Muhammed said: These, then, are laws that anyone who advocates following the revealed laws of the

قال أبو محمد وهذا لا يحل عندنا وليس لأحد أن يحرم على نفسه ما لم يحرم الله عز وجل عليه إلا أن طوائف من علمائنا اختلفوا في تحريم الزوجة والأمة فقال به قوم: ومنع منه آخرون وبالمنع منه نقول ولا يحل لأحد أن يحرم زوجة ولا غيرها، ولا تكون بذلك حراما، ولا طلاقا ولا كفارة في ذلك وهي حلال له كما كانت وكذلك سائر ماله ومن شرائع بني إسرائيل {}

قال أبو محمد وهذا لا يلزمنا ومن شريعة آدم عليه السلام قوله {} قال أبو محمد ولا خلاف في أنه لا يجوز عندنا التحاكم بالقرابين، ولا يحل عندنا الاستسلام للقتل ظلما، بل المقتول دون نفسه شهيد. ومن شريعة الكتابيين في زمان أصحاب الكهف {} قال أبو محمد وهذ حرام في شريعتنا وقد قال عليه السلام: إن أولئك كانوا إذا مات فيهم رجل صالح بنوا على قبره مسجدا أولئك شرار الخلق. قال أبو محمد: فهذه شرائع يلزم من قال باتباع شرائع الأنبياء عليهم السلام أن يقول بها، وإلا فقد نقضوا أصلهم. واحتج الموجبون للأخذ بشرائع الأنبياء عليهم السلام بقوله تعالى {}

[18] **Translator's note (L2287):** The wording "one of my two daughters" preserves the first-person expression in the supplied Arabic within the author's discussion. The empty braces mark absent quotations in the supplied text. The final introduction to a quotation continues into the next unit.

[19] **Translator's note (L2288):** The initial empty braces mark the absent quotation introduced at the end of the preceding unit. The claims concerning the Prophet's and Umar's parents are the author's own assertions. The final clause continues in the next unit, where Allah is named as the subject of "guides."

[20] **Translator's note (L2289):** The opening names Allah as the subject of the verb "guides" at the end of the preceding unit; the dashes preserve that connection across the segment boundary. The empty braces mark absent quotations in the supplied text.

[21] **Translator's note (L2290):** The empty braces mark an absent quotation in the supplied text.

prophets, peace be upon them, is obliged to affirm; otherwise, they have contradicted their own principle. Those who make it obligatory to adopt the revealed laws of the prophets, peace be upon them, adduced as evidence His words, Exalted is He: {}.[22]

L2292 Abu Muhammed said: This provides them with no evidence. No two Muslims disagree that this has been abrogated, and that anyone who adjudicates according to a ruling of the Gospel for which no revelation in the revealed law of Islam has supplied an explicit text is an unbeliever, a polytheist, outside Islam. They also adduced as evidence His words, Exalted is He: {}. Abu Muhammed said: By this Allah, Exalted is He, meant only the prophets of the Children of Israel, not Muhammed, may Allah bless him and grant him peace ﷺ, because He, Exalted is He, says: {}.[23]

L2293–2294 This is clarified by His saying, exalted is He, {}. We do not have prophets; we have only one prophet, whereas all the prophets are Muslims. Allah, exalted is He, has related that earlier prophets said, "We have been commanded to be among the Muslims." Moreover, He, exalted is He, has related that the People of the Book said to us, {}. It is therefore established that Allah, exalted is He, forbade the religion of the Jews and Christians and commanded us to follow the religion of Abraham, peace be upon him. He, exalted is He, said, {}. Thus it is established with certainty that Abraham's law preceded the Torah and that his law is binding upon us. It is utterly impossible that we should be commanded to follow something revealed after our law: this is contradictory. Thus the interpretation of anyone who supposed an error in His saying, exalted is He, {}, is invalid, and it is established that they are exclusively the prophets of the Children of Israel. If they say, "There is no difference between the Torah and the law of Abraham, peace be upon him, nor between our law," and they adduce as evidence what ʿAbd Allah ibn Yusuf related to us: Ahmad ibn Fath related to us; ʿAbd al-Wahhab ibn ʿIsa

[22]**Translator's note (L2291):** The empty braces mark absent quotations in the supplied text. الكتابيين is rendered "the people of the two Scriptures," referring to Jews and Christians; its unvocalized written form also permits a dual reading, "the two scriptural adherents."

[23]**Translator's note (L2292):** The empty braces mark absent quotations in the supplied text.

قال أبو محمد وهذا لا حجة لهم فيه لا خلاف بين اثنين من المسلمين أن هذا منسوخ، وأن من حكم بحكم الإنجيل مما لم يأت بالنص عليه وحي في شريعة الإسلام فإنه كافر مشرك خارج عن الإسلام واحتجوا بقوله تعالى {} قال أبو محمد وهذا إنما عني الله تعالى به أنبياء بني إسرائيل لا محمدا صلى الله عليه وسلم لأنه تعالى يقول {}

وبيان ذلك قوله تعالى {} ونحن ليس لنا نبيون وإنما لنا نبي واحد والأنبياء كلهم مسلمون وقد حكى الله تعالى عن أنبياء سالفين أنهم قالوا أمرنا بأن نكون من المسلمين. وأيضا فقد قال تعالى حاكيا عن أهل الكتاب أنهم قالوا لنا {} فصح أن الله تعالى نهى عن دين اليهود والنصارى، وأمرنا بدين إبراهيم عليه السلام وقال تعالى {} فصح يقينا أن إبراهيم كانت شريعته قبل التوراة، وأن شريعته لازمة لنا فمن المحال الممتنع أن نؤمر باتباع شيء نزل بعد شريعتنا، وهذا متناقض فبطل تأويل من ظن الخطأ في قوله تعالى {} وصح أنهم أنبياء بني إسرائيل فقط فإن قالوا: لا خلاف بين التوراة وبين شريعة إبراهيم عليه السلام، ولا بين شريعتنا، واحتجوا بما حدثناه عبد الله بن يوسف، ثنا أحمد بن فتح، ثنا عبد الوهاب بن عيسى، ثنا أحمد بن محمد، ثنا أحمد بن علي، ثنا مسلم، ثنا محمد بن رافع، ثنا عبد الرزاق، ثنا معمر، عن همام بن منبه عن أبي هريرة عن رسول الله صلى الله عليه وسلم أنه قال الأنبياء إخوة من علات وأمهاتهم شتى ودينهم واحد قلنا لهم: هذا حجة عليكم لا لكم، إن تأولتم فيه اتفاق أحكام شرائعهم أكذبهم القرآن في قوله تعالى {وأنزلنآ إليك لكتاب بلحق مصدقا لما بين يديه

related to us; Ahmad ibn Muhammed related to us; Ahmad ibn ʿAli related to us; Muslim related to us; Muhammed ibn Rafiʿ related to us; ʿAbd al-Razzaq related to us; Maʿmar related to us, from Hammam ibn Munabbih, from Abu Hurayrah, from the Messenger of Allah, may Allah bless him and grant him peace ﷺ, that he said, "The prophets are brothers through one father; their mothers are different, and their religion is one"—we say to them: This is evidence against you, not for you. If you interpret it as meaning that the rulings of their laws agree, the Quran gives the lie to them in His saying, exalted is He, {And We have sent down to you the Book in truth, confirming the Scripture before it and acting as a guardian over it. So judge between them by what Allah has sent down, and do not follow their desires, turning away from the truth that has come to you. For each of you We have appointed a law and a path. Had Allah willed, He would have made you one community, but He intended to test you in what He has given you. So vie with one another in good deeds. To Allah is the return of you all, and He will inform you concerning that over which you differed}. His saying, exalted is He, concerning Jesus, peace be upon him, also gives the lie to them: {And confirming the Torah before me, and so that I may make lawful for you some of what was forbidden to you. I have come to you with a sign from your Lord, so fear Allah and obey me}. The matter of the Sabbath, the prohibition of every animal possessing a claw, and what Israel forbade himself also give the lie to them. Rather, the meaning of his saying, may Allah bless him and grant him peace ﷺ, "Their religion is one," is simply the affirmation of Allah's oneness, concerning which they never differed at all. They also adduce as evidence His saying, exalted is He, {Those are the ones whom Allah has guided, so follow their guidance. Say: I ask you for no payment for it; it is only a reminder to all the worlds}.[24][25]

من لكتاب ومهيمنا عليه فحكم بينهم بما أنزل الله ولا تتبع أهوآءهم عما جآءك من لحق لكل جعلنا منكم شرعة ومنهاجا ولو شآء الله لجعلكم أمة واحدة ولكن ليبلوكم في ما آتاكم فاستبقوا الخيرات إلى الله مرجعكم جميعا فينبئكم بما كنتم فيه تختلفون} وأكذبهم قوله تعالى عن عيسى عليه السلام {ومصدقا لما بين يدي من لتوراة ولأحل لكم بعض لذي حرم عليكم وجئتكم بآية من ربكم فتقوا لله وأطيعون} وأكذبهم أمر السبت وتحريم كل ذي ظفر وما حرم إسرائيل على نفسه ولكن معنى قوله صلى الله عليه وسلم ودينهم واحد إنما يعني التوحيد الذي لم يختلفوا فيه أصلا واحتجوا بقوله تعالى {أولئك لذين هدى لله فبهداهم قتده قل لا أسألكم عليه أجرا إن هو إلا ذكرى للعالمين}

L2295–2296 Abu Muhammed said: This provides them with no evidence, because that

قال أبو محمد وهذا لا حجة لهم فيه لأن الذي أمرنا أن نقتدي بهم فيه هو ما اتفقت فيه شريعتنا وشريعتهم مثل قوله تعالى: {وإذ أخذنا ميثاق بني إسرائيل لا تعبدون إلا لله وبلوالدين إحسانا وذي لقربى واليتامى ولمساكين وقولوا للناس حسنا وأقيموا لصلاة وآتوا لزكاة ثم توليتم إلا قليلا منكم وأنتم معرضون} فأما باقي الآية في قوله تعالى

[24] **Translator's note (L2293):** The five empty pairs of braces mark missing quotations in the supplied text; their contents have not been reconstructed. The wording "anyone who supposed an error" follows the supplied reading al-khaṭaʾ, "error." It is awkward in context and may be corrupt, but has not been silently emended.

[25] **Qur'an references (L2293):** Qur'an 5:46 (Al-Ma'idah); Qur'an 5:48 (Al-Ma'idah); Qur'an 3:50 (Ali 'Imran); Qur'an 6:90 (Al-An'am).

in which we have been commanded to follow their example is what our law and their law agree upon, such as His saying, exalted is He, {And when We took the covenant of the Children of Israel: You shall worship none but Allah, and show kindness to parents, relatives, orphans, and the needy; speak kindly to people, establish prayer, and give the obligatory alms. Then you turned away, except a few of you, while you were averse}. As for the remainder of the verse in His saying, exalted is He, {Your Lord has decreed that you worship none but Him and show kindness to parents. If one or both of them reach old age with you, do not say "Ugh" to them, nor rebuke them, but speak to them with honorable words}, we did not derive it from this verse, but from Allah's command to us to that effect in another verse. Likewise His saying, mighty and majestic is He, {He has prescribed for you of religion what He enjoined upon Noah, and that which We have revealed to you, and what We enjoined upon Abraham, Moses, and Jesus: Establish the religion and do not become divided within it. What you call them to is grievous to the polytheists. Allah chooses for Himself whomever He wills and guides to Himself whoever turns to Him}. He, exalted is He, thus expressly stated that they were all commanded not to become divided in religion. This is precisely what he, peace be upon him, reported: that the religion of the prophets, peace be upon them, is one. Allah, exalted is He, has expressly stated that He commanded some of them to refrain from working on the Sabbath, whereas He did not command us to do so; and He permitted wine for a time and then prohibited it afterward. It is therefore established with certainty that what they were forbidden to become divided over, and what He prescribed for them all as the one religion, is simply the affirmation of Allah's oneness; whereas that in which He differentiated among them consists of the laws and the acts that are obligatory or prohibited. This is precisely our position.[26][27]

{وقضى ربك ألا تعبدوا إلا إياه وبالوالدين إحسانا إما يبلغن عندك لكبر أحدهما أو كلاهما فلا تقل لهمآ أف ولا تنهرهما وقل لهما قولا كريما} فلم نأخذه من هذه الآية، لكن من أمر الله تعالى لنا بذلك في آية أخرى ومثل قوله عز وجل {شرع لكم من لدين ما وصى به نوحا ولذي أوحينآ إليك وما وصينا به إبراهيم وموسى وعيسى أن أقيموا لدين ولا تتفرقوا فيه كبر على لمشركين ما تدعوهم إليه لله يجتبي إليه من يشآء ويهدي إليه من ينيب} فنص تعالى على أنهم كلهم أمروا ألا يتفرقوا في الدين، وهذا هو نفس إخباره عليه السلام أن دين الأنبياء عليهم السلام واحد، وقد نص الله تعالى على أنه أمر بعضهم بترك العمل في السبت، ولم يأمرنا نحن بذلك، وأحل الخمر مدة وحرمها بعد ذلك، فصح يقينا أن الذي نهوا عن التفرق فيه. وأن الذي شرع لجميعهم من الدين الواحد إنما هو التوحيد، وأن الذي فرق فيه بينهم هي الشرائع والأعمال الواجبات والمحرمات وهذا هو نفس قولنا

L2297 He, exalted is He, has said, {If their turning away weighs heavily upon you,

وقد قال تعالى {وإن كان كبر عليك إعراضهم فإن ستطعت أن تبتغي نفقا في لأرض أو سلما في لسمآء فتأتيهم بآية ولو شآء لله لجمعهم على لهدى فلا تكونن من لجاهلين} وقال {وأنزلنآ إليك لكتاب بلحق مصدقا لما بين يديه من لكتاب ومهيمنا عليه فحكم

[26] **Translator's note (L2295):** The text introduces Quran 17:23 as "the remainder of the verse" after quoting Quran 2:83. These are separate verses; the supplied wording has been retained.

[27] **Qur'an references (L2295):** Qur'an 2:83 (Al-Baqarah); Qur'an 17:23 (Al-Isra); Qur'an 42:13 (Ash-Shuraa).

then, if you can seek a tunnel into the earth or a ladder into the sky and bring them a sign—had Allah willed, He would have brought them all together upon guidance. So do not be among the ignorant}. And He said, {And We have sent down to you the Book in truth, confirming the Scripture before it and acting as a guardian over it. So judge between them by what Allah has sent down, and do not follow their desires, turning away from the truth that has come to you. For each of you We have appointed a law and a path. Had Allah willed, He would have made you one community, but He intended to test you in what He has given you. So vie with one another in good deeds. To Allah is the return of you all, and He will inform you concerning that over which you differed}. He, exalted is He, said, {For each there is a direction toward which he turns, so vie with one another in good deeds. Wherever you may be, Allah will bring you all together. Indeed, Allah has power over all things}. Thus it is established by the explicit text that He, exalted is He, differentiated between the laws, between the path of each of them, and between the direction of each of them. He, exalted is He, has said, {Allah desires to make things clear to you, to guide you to the ways of those before you, and to turn toward you in forgiveness. Allah is All-Knowing, All-Wise}. It is therefore established that the speech of Allah, exalted is He, does not contradict itself, and it is established that what we have been commanded to follow their ways in is something other than the laws in which He differentiated between us and them. It is therefore established that this is the affirmation of Allah's oneness, which He made equally binding upon them all. Thus it is established that this is the guidance in which he, may Allah bless him and grant him peace ﷺ, was commanded to follow their example. This is also clarified by His saying, exalted is He, relating that His messenger Joseph, peace be upon him, said, {And I have followed the religion of my fathers Abraham, Isaac, and Jacob. It is not for us to associate anything with Allah. That is of Allah's favor upon us and upon humankind, but most people do not give thanks}.[28]

L2298–2299 Abu Muhammed said: He thus made explicitly clear that they agreed specifically upon the affirmation of Allah's oneness. Otherwise, He, exalted is He,

[28] **Qur'an references (L2297):** Qur'an 6:35 (Al-An'am); Qur'an 5:46 (Al-Ma'idah); Qur'an 5:48 (Al-Ma'idah); Qur'an 2:148 (Al-Baqarah); Qur'an 12:38 (Yusuf).

بينهم بما أنزل الله ولا تتبع أهواءهم عما جاءك من الحق لكل جعلنا منكم شرعة ومنهاجا ولو شاء الله لجعلكم أمة واحدة ولكن ليبلوكم في ما آتاكم فاستبقوا الخيرات إلى الله مرجعكم جميعا فينبئكم بما كنتم فيه تختلفون} قال تعالى {ولكل وجهة هو موليها فستبقوا الخيرات أين ما تكونوا يأت بكم الله جميعا إن الله على كل شيء قدير} فصح بالنص أنه تعالى فرق بين الشرائع، وبين منهاج كل واحد منهم، وبين وجهة كل واحد منهم وقد قال تعالى {يريد الله ليبين لكم ويهديكم سنن الذين من قبلكم ويتوب عليكم والله عليم حكيم} فصح أن الله تعالى لا يتناقض كلامه، وصح أن الذي أمرنا أن نتبع فيه سننهم هو غير الشرائع التي فرق بيننا وبينهم فيها، فصح أنه التوحيد الذي سوى فيه بينهم كلهم في التزامه فصح أنه هو الهدى الذي أمر صلى الله عليه وسلم بأن يقتدي بهم ويبين ذلك أيضا قوله تعالى حاكيا عن رسوله يوسف عليه السلام أنه قال: {واتبعت ملة آبائي إبراهيم وإسحاق ويعقوب ما كان لنا أن نشرك بالله من شيء ذلك من فضل الله علينا وعلى الناس ولكن أكثر الناس لا يشكرون}

قال أبو محمد فبين نصا أنهم اتفقوا في التوحيد خاصة، وإلا فقد نص تعالى على أن إسرائيل وهو يعقوب عليه السلام حرم على نفسه أشياء كانت له حلالا، وليس هذا في شريعة إبراهيم عليه السلام؛ فصح يقينا أنه كان مباحا لإسرائيل أن يحرم على

has expressly stated that Israel, who is Jacob, peace be upon him, forbade himself things that had been lawful for him, and this is not part of the law of Abraham, peace be upon him. It is therefore established with certainty that Israel was permitted to forbid himself certain foods. As for the law of Abraham, peace be upon him, it is our very own law, as we shall explain at the end of this chapter, if Allah, mighty and majestic is He, wills. Our law does not allow anyone to forbid himself food that Allah has made lawful for him. Jacob was married to two sisters at the same time, and this is not lawful in our law, which is the law of Abraham. Thus, when an equivalence was drawn by Joseph, peace be upon him, between the religion of Abraham and that of Jacob, although their laws differed, we knew that this concerned the affirmation of Allah's oneness alone, to the exclusion of anything else. One of our opponents objected, saying: "If you interpret His saying, exalted is He, as concerning the affirmation of Allah's oneness alone, to the exclusion of anything else, you strip the verse of its benefit, because the affirmation of Allah's oneness is derived through reason."

نفسه بعض الطعام. وأما شريعة إبراهيم عليه السلام فهي شريعتنا نفسها، على ما نبين في آخر هذا الباب إن شاء الله عز وجل، وليس في شريعتنا أن يحرم أحد على نفسه طعاما أحله الله له، وقد جمع يعقوب بين الأختين. وهذا لا يحل في شريعتنا التي هي شريعة إبراهيم، فلما سوى يوسف عليه السلام بين ملة إبراهيم ويعقوب وشرائعهما مفترقة علمنا أن ذلك في التوحيد وحده لا فيما سواه. فاعترض بعض خصومنا بأن قال: إذا حملتم قوله تعالى على أن ذلك في التوحيد وحده لا فيما سواه عريتم الآية من الفائدة لأن التوحيد مأخوذ بالعقل

L2300 Abu Muhammed said: This is among the feeblest arguments that a contentious disputant puts forward. Whoever says this is bound to delete from the Quran every repeated verse, such as { and others. The oneness of Allah is indeed known necessarily through reason, but having it recited did not become an obligatory duty through reason, nor was the threat against its denier—of death and the Fire in the Hereafter—established through reason. Rather, all of that became binding solely through the messengers' warning. The verse mentioned thus made belief in Allah's oneness obligatory and made acknowledgment of it obligatory. This never became obligatory through reason, because reason does not prescribe law or disclose whom Allah, exalted is He, will punish in the Hereafter or whom He will bless. Reason merely distinguishes between the impossible, the necessary, and the possible; it distinguishes among existing things and between truth, which exists and is apprehensible by reason, and falsehood, which is nonexistent and is apprehensible by reason. This is what reason contains, and nothing more. Some of them said: "We interpret His saying, exalted is He, {Those are the ones whom Allah has guided, so follow their guidance. Say: I ask you

قال أبو محمد هذا من أغث احتجاج يورده مشغب، ويلزم من قال بهذا أن يحذف من القرآن كل آية مكررة مثل {وغيرها والتوحيد عرف بالعقل ضرورة ولكن ما يجب الإقراء به فرضا، ولا صح الوعيد على جاحده بالقتل والنار في الآخرة بالعقل، وإنما وجب ذلك كله بإنذار الرسل فقط. فالآية المذكورة أوجبت اعتقاد التوحيد، وأوجبت الإقرار به، ولم يجب ذلك قط بالعقل، لأن العقل لا يشرع ولا يخبر بمن يعذب الله تعالى في الآخرة، ولا بمن ينعم، وإنما العقل مميز بين الممتنع والواجب، والممكن ومميز بين الأشياء الموجودات وبين الحق الموجود المعقول والباطل المعدوم المعقول فهذا ما في العقل ولا مزيد وقال بعضهم نحمل قوله تعالى {أولئك لذين هدى لله فبهداهم قتده قل لا أسألكم عليه أجرا إن هو إلا ذكرى للعالمين} على ما لم يأتنا فيه نص أنه نسخ من شرائعهم ونحمل قوله {وأنزلنآ إليك لكتاب بلحق مصدقا لما بين يديه من لكتاب ومهيمنا عليه فحكم بينهم بمآ أنزل لله ولا تتبع أهوآءهم عما جآءك من

for no payment for it; it is only a reminder to all the worlds}, as referring to those parts of their laws concerning which no explicit text has reached us stating that they have been abrogated. And we interpret His saying, {And We have sent down to you the Book in truth, confirming the Scripture before it and acting as a guardian over it. So judge between them by what Allah has sent down, and do not follow their desires, turning away from the truth that has come to you. For each of you We have appointed a law and a path. Had Allah willed, He would have made you one community, but He intended to test you in what He has given you. So vie with one another in good deeds. To Allah is the return of you all, and He will inform you concerning that over which you differed}, as referring to those parts of their laws that have been abrogated."[29][30]

L2301–2302 Abu Muhammed said: This is an interpretation of theirs devoid of evidence, and whatever is devoid of evidence is a baseless claim. We have already set out the proofs that the only matter in which we were commanded to follow their example is the affirmation of Allah's oneness alone. They also adduced the saying of Allah Most High: {And We have sent down to you the Book in truth, confirming the Scripture before it and as a guardian over it. So judge between them by what Allah has sent down, and do not follow their desires, departing from the truth that has come to you. For each of you We have appointed a law and a way. Had Allah willed, He would have made you one community, but so that He might test you in what He has given you. So vie with one another in good deeds. To Allah you shall all return, and He will inform you of that concerning which you used to differ.} Abu Muhammed said: Allah Most High has clarified this in another verse, other than this verse, through His saying, Most High: {And We have sent down to you the Book in truth, confirming the Scripture before it and as a guardian

[29] **Translator's note (L2300):** After "such as," the supplied text has an opening quotation brace followed immediately by "and others"; the example quotation is missing. The supplied al-iqrā' means causing or having something to be recited, rendered here as "having it recited." The context may suggest al-iqrār, "acknowledgment," which occurs later in the passage, but the supplied reading has not been silently corrected.

[30] **Qur'an references (L2300):** Qur'an 6:90 (Al-An'am); Qur'an 5:46 (Al-Ma'idah); Qur'an 5:48 (Al-Ma'idah).

لحق لكل جعلنا منكم شرعة ومنهاجا ولو شآء الله لجعلكم أمة واحدة ولكن ليبلوكم في مآ آتاكم فاستبقوا الخيرات إلى الله مرجعكم جميعا فينبئكم بما كنتم فيه تختلفون} على ما نسخ من شرائعهم.

قال أبو محمد: هذا تأويل منهم مجرد من الدليل، وما تجرد عن الدليل فهو دعوى ساقطة. وقد بينا الدلائل على أن الذي أمرنا بالاقتداء بهم فيه إنما هو التوحيد وحده فقط واحتجوا بقول الله تعالى {وأنزلنآ إليك لكتاب بلحق مصدقا لما بين يديه من لكتاب ومهيمنا عليه فحكم بينهم بمآ أنزل لله ولا تتبع أهوآءهم عما جآءك من لحق لكل جعلنا منكم شرعة ومنهاجا ولو شآء الله لجعلكم أمة واحدة ولكن ليبلوكم في مآ آتاكم فاستبقوا الخيرات إلى الله مرجعكم جميعا فينبئكم بما كنتم فيه تختلفون} قال أبو محمد: وقد بين الله تعالى في آية أخرى غير هذه الآية بقوله تعالى {وأنزلنآ إليك لكتاب بلحق مصدقا لما بين يديه من لكتاب ومهيمنا عليه فحكم بينهم بمآ أنزل لله ولا تتبع أهوآءهم عما جآءك من لحق لكل جعلنا منكم شرعة ومنهاجا ولو شآء الله لجعلكم أمة واحدة ولكن ليبلوكم في مآ آتاكم فاستبقوا الخيرات إلى الله مرجعكم جميعا فينبئكم بما كنتم فيه تختلفون} {ومن يبتغ غير لإسلام دينا فلن يقبل منه وهو في لآخرة من لخاسرين} واحتجوا بقول رسول الله صلى الله عليه وسلم في أمر ثنية الربيع أو الجرح الذي جرحت على حسب اختلاف الروايات في ذلك كتاب الله القصاص

over it. So judge between them by what Allah has sent down, and do not follow their desires, departing from the truth that has come to you. For each of you We have appointed a law and a way. Had Allah willed, He would have made you one community, but so that He might test you in what He has given you. So vie with one another in good deeds. To Allah you shall all return, and He will inform you of that concerning which you used to differ.} {Whoever seeks a religion other than Islam, it will never be accepted from him, and in the Hereafter he will be among the losers.} They also adduced the saying of the Messenger of Allah ﷺ concerning al-Rubayyi''s incisor, or the wound she inflicted, according to the differing reports concerning this: "Allah's Book prescribes retaliation."[31][32]

L2303 Abu Muhammed said: The Messenger of Allah ﷺ meant only His saying, Most High: {The sacred month for the sacred month, and violations of sacred things are subject to retaliation. Whoever transgresses against you, transgress against him in the same measure as he transgressed against you. Fear Allah, and know that Allah is with those who fear Him.} This, which was addressed to us, is what binds us. No text whatsoever has come stating that he, peace be upon him, meant any verse other than this one. If someone says, "Perhaps he, peace be upon him, meant by that His saying, Most High: {And We prescribed for them therein: a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and retaliation for wounds. Whoever forgoes it as charity, it is an expiation for him. Whoever does not judge by what Allah has sent down—those are the wrongdoers.} How do you know that he, peace be upon him, meant the verse you recited rather than this one?" The answer—and success is through Allah Most High—is that the demonstration that, by his saying, "Allah's Book prescribes retaliation," he ﷺ did not mean His saying, Most High: {And We prescribed for them therein: a life for a life,

قال أبو محمد إنما عنى رسول الله صلى الله عليه وسلم قوله تعالى {لشهر لحرام بلشهر لحرام ولحرمات قصاص فمن عتدى عليكم فعتدوا عليه بمثل ما عتدى عليكم وتقوا لله وعلموا أن لله مع لمتقين} وهذا الذي خوطبنا به نحن هو اللازم لنا ولم يأت نص عن أنه عليه السلام عنى غير هذه الآية أصلا. فإن قال قائل: فلعله عليه السلام إنما عنى بذلك قوله تعالى {وكتبنا عليهم فيها أن لنفس بلنفس ولعين بلعين ولأنف بلأنف ولأذن بلأذن ولسن بلسن ولجروح قصاص فمن تصدق به فهو كفارة له ومن لم يحكم بما أنزل لله فأولئك هم لظالمون} الآية وما علمكم بأنه عنى عليه السلام الآية التي تلوتم دون هذه؟. فالجواب وبالله تعالى التوفيق إن البرهان على أنه صلى الله عليه وسلم لم يعن بقوله كتاب الله القصاص قوله تعالى {وكتبنا عليهم فيها أن لنفس بلنفس ولعين بلعين ولأنف بلأنف ولأذن بلأذن ولسن بلسن ولجروح قصاص فمن تصدق به فهو كفارة له ومن لم يحكم بما أنزل لله فأولئك هم لظالمون} أنه ليس في سورة التوراة قبول أرش، وإنما الأرش في حكم الإسلام، وفي الحديث المذكور أنهم قبلوا الأرش فصح أنه صلى الله عليه وسلم لم يعن قوله تعالى {وكتبنا عليهم فيها أن لنفس بلنفس

[31] **Translator's note (L2302):** After announcing "another verse, other than this verse," the supplied text repeats the preceding quotation of Quran 5:48 before quoting 3:85. The repetition has been retained. The reference to "al-Rubayyi''s incisor" is compressed and potentially misleading: the Arabic does not explicitly identify whose incisor was injured. The alternative account explicitly describes a wound she inflicted.

[32] **Qur'an references (L2301):** Qur'an 5:46 (Al-Ma'idah); Qur'an 5:48 (Al-Ma'idah); Qur'an 3:85 (Ali 'Imran).

an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and retaliation for wounds. Whoever forgoes it as charity, it is an expiation for him. Whoever does not judge by what Allah has sent down—those are the wrongdoers,} is that the chapter of the Torah contains no provision for accepting compensation for bodily injury, whereas compensation for bodily injury is part of the ruling of Islam. The aforementioned report states that they accepted compensation for bodily injury. Thus it is established that he ﷺ did not mean His saying, Most High: {And We prescribed for them therein: a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and retaliation for wounds. Whoever forgoes it as charity, it is an expiation for him. Whoever does not judge by what Allah has sent down—those are the wrongdoers.}[33][34]

ولعين بلعين ولأنف بلأنف ولأذن بلأذن ولسن بلسن ولجروح قصاص فمن تصدق به فهو كفارة له ومن لم يحكم بما أنزل الله فأولئك هم لظالمون}

L2304–2305 They also adduced his saying ﷺ when he saw the Jews fasting on the day of ʿAshura: "We have a greater claim to Moses than they do." Abu Muhammed said: This affords them no evidence, because he ﷺ had commanded fasting on it. Had Allah Most High not commanded him to fast on it, he would not have followed the Jews in that. It is also authentically established that it was a day on which Quraysh used to fast in the age of ignorance, and he ﷺ fasted on it as an act of piety. They also argued by saying: "Since the law of the prophets, peace be upon them, was true, following the truth is obligatory until something comes that transfers us away from it." Abu Muhammed said: The answer—and success is through Allah Most High—is that, although those laws were binding as a matter of right upon those who were addressed by them, they were never prescribed for us. What was binding as a matter of right upon one person is not thereby binding upon another unless Allah Most High makes it obligatory for him. We were prescribed only to acknowledge the earlier prophets and that they were sent with the truth to their own peoples, not to everyone. We were not prescribed to act according to their laws. They also adduced his calling ﷺ for the Torah on the day he stoned the two Jews, and his asking them, peace be upon him, "What do you find in

واحتجوا بقوله صلى الله عليه وسلم إذا رأى اليهود يصومون يوم عاشوراء نحن أولى بموسى منهم قال أبو محمد وهذا لا حجة لهم فيه لأنه صلى الله عليه وسلم قد أمر بصيامه ولولا أن الله تعالى أمره بصيامه ما اتبع اليهود في ذلك، وقد صح أنه كان يوما تصومه قريش في الجاهلية فصامه صلى الله عليه وسلم تبررا واحتجوا أيضا بأن قالوا لما كانت شريعة الأنبياء عليهم السلام حقا وجب اتباع الحق حتى يأتي ما ينقلنا عنه. قال أبو محمد: والجواب وبالله تعالى التوفيق: إن تلك الشرائع وإن كانت حقا على الذين خوطبوا بها فلم تكتب قط علينا، وليس ما كان حقا على واحد كان حقا على غيره، إلا أن يوجبه الله تعالى عليه، وإنما كتب علينا الإقرار بالأنبياء السالفين، وبأنهم بعثوا إلى قومهم بالحق لا إلى كل أحد ولم يكتب علينا العمل بشرائعهم واحتجوا بدعائه صلى الله عليه وسلم بالتوراة يوم رجم اليهوديين وأنه عليه السلام سألهم: ما تجدون في التوراة فلما أخبروه بالرجم وأنهم تركوه قال صلى الله عليه وسلم أنا أول من أحيا أمر الله تعالى

[33] **Translator's note (L2303):** "The chapter of the Torah" renders the supplied wording literally. The expression is unusual here, and the text does not identify a particular chapter.

[34] **Qur'an references (L2303):** Qur'an 5:45 (Al-Ma'idah).

the Torah?" When they told him about stoning and that they had abandoned it, he ﷺ said: "I am the first to revive the command of Allah Most High."

L2306 Abu Muhammed said: This affords them no evidence. Rather, it is an evil interpretation on the part of whoever interprets it in that way, because he ﷺ had unquestionably been commanded, in the law revealed to him, to stone those guilty of unlawful sexual intercourse who had acquired the status of having consummated a valid marriage. He ﷺ called for the Torah only to put an end to the Jews' contentious objections, to rebuke them for abandoning compliance with what they had been commanded, and to make known to them that they had contravened their own Book, which they acknowledge was sent down to them. Whoever says that he ﷺ stoned the two Jews in obedience to the Torah, rather than because Allah Most High had commanded him, in the law revealed to him, to stone everyone guilty of unlawful sexual intercourse who had acquired that marital status, has disbelieved, departed from Islam, and rendered his blood lawful to shed. For he attributes to the Prophet ﷺ disobedience to his Lord concerning what He commanded him in the law revealed to him, in that he abandoned it and followed what was sent down in the Torah.[35]

L2307–2312 He, Most High, has stated that the Jews distort words from their proper places. It is therefore an act of grave disbelief for someone who claims to be a Muslim to say that the Prophet ﷺ judged by a Book which He has stated is distorted. By Allah, great indeed is the astonishment occasioned by someone who attributes to the Messenger of Allah ﷺ judging according to what is in the Torah when stoning two Jews who had committed unlawful sexual intercourse, while considering his own contemptible self above doing this, saying: "If two Jews who had committed unlawful sexual intercourse were brought before me, I would not carry out the prescribed punishment upon them, and I would send them back to the people of their religion." Thus he considers himself above what he ascribes to his Prophet ﷺ. Before Allah Most High, we disavow supporting any doctrine that leads to such

قال أبو محمد: وهذا لا حجة لهم فيه بل هو تأويل سوء ممن تأوله لأنه صلى الله عليه وسلم بلا شك في شريعته المنزلة عليه قد أمر برجم من أحصن من الزناة وإنما دعا صلى الله عليه وسلم بالتوراة حسما لشغب اليهود وتبكيتا لهم في تركهم العمل بما أمروا به، وإعلاما لهم بأنهم خالفوا كتابهم الذي يقرون أنه أنزل عليهم ومن قال إنه صلى الله عليه وسلم رجم اليهوديين اتباعا للتوراة لا لأمر الله تعالى له برجم كل من أحصن من الزناة في شريعته المنزلة عليه، فقد كفر وفارق الإسلام وحل دمه لأنه ينسب إلى النبي صلى الله عليه وسلم عصيان ربه فيما أمره به في شريعته المنزلة عليه، إذ تركها واتبع ما أنزل في التوراة.

وقد أخبر تعالى أن اليهود يحرفون الكلم عن مواضعه، فمن الكفر العظيم أن يقول من يدعي أنه مسلم إن النبي صلى الله عليه وسلم حكم بكتاب قد أخبر أنه محرف ووالله إن العجب ليعظم ممن ينسب إلى رسول الله صلى الله عليه وسلم الحكم بما في التوراة في رجم يهوديين زنيا، وهو يرفع نفسه الخسيسة عن هذا، فيقول: إن قدم إلي يهوديان زنيا لم أقم عليهما الحد، ورددتهما إلى أهل دينهما فهو يترفع عما يصف به نبيه صلى الله عليه وسلم نبرأ إلى الله تعالى من نصر كل مذهب يؤدي إلى مثل هذه البوائق والكبائر، وحسبنا الله ونعم الوكيل واحتجوا بما روي أنه صلى الله عليه وسلم سدل ناصيته كما يفعل أهل الكتاب ثم فرقها بعده، وكان يحب موافقة أهل الكتاب فيما لم ينزل عليه فيه شيء. قال أبو محمد: وهذا الحديث من أقوى الحجج عليهم لأنه نص

[35] **Translator's note (L2306):** The technical marital status underlying the stoning ruling is expressed by aḥṣana. It is rendered descriptively here; it does not simply mean being currently married.

فيه على أنه صلى الله عليه وسلم إنما كان يحب موافقة أهل الكتاب فيما لم ينزل عليه فيه شيء فصح أنه صلى الله عليه وسلم إنما كان يفعل ذلك في المباح له فعله وتركه مما لم ينه عنه ولا أمر به، وهذا غير ما نحن فيه، وإنما كلامنا في وجوب شرائعهم ما لم ننه عنها وفي سقوطها حتى نؤمر بها، وأما الزي المباح وفرق الشعر وسدله فكل ذلك مباح حتى الآن فعله وتركه. هذا كل ما احتجوا به قد أبطلنا شغبهم فيه وبالله تعالى التوفيق. ونحن إن شاء الله تعالى ذاكرون البراهين المبينة قولنا المبطلة قولهم ولا حول ولا قوة إلا بالله العلي العظيم. حدثنا عبد الله بن يوسف، ثنا أحمد بن فتح، ثنا عبد الوهاب بن عيسى ثنا أحمد بن محمد، ثنا أحمد بن علي، ثنا مسلم، ثنا أبو بكر بن أبي شيبة، ويحيى بن يحيى واللفظ له قال أبو بكر: نا هشيم، ثنا سيار، ثنا يزيد الفقير، ثنا جابر وقال يحيى، أنا هشيم، عن سيار، عن يزيد الفقير، عن جابر بن عبد الله الأنصاري أن رسول الله صلى الله عليه وسلم قال أعطيت خمسا لم يعطهن أحد قبلي كان كل نبي يبعث إلى قومه خاصة وبعثت إلى كل أحمر وأسود وذكر باقي الحديث. وبه إلى مسلم، ثنا قتيبة بن سعيد، وعلي بن حجر قالا: ثنا إسماعيل وهو ابن جعفر عن العلاء بن عبد الرحمن عن أبيه عن أبي هريرة أن رسول الله صلى الله عليه وسلم قال فضلت على الأنبياء بست فذكرهن وفيها أرسلت إلى الخلق كافة. قال أبو محمد: هذا الحديث يكفي من كل شغب موه به المبطلون ويبين أن كل نبي قبل نبينا صلى الله عليه وسلم إنما بعث إلى قومه خاصة وإذا كان ذلك صح بيقين أن غير قومه لم يلزموا بشريعة نبي غير نبيهم، فصح بهذا يقينا أنه لم يبعث إلينا أحد من الأنبياء غير محمد صلى الله عليه وسلم وإذ قد صح ذلك فقد قال تعالى {وإلى ثمود أخاهم صالحا قال يقوم عبدوا الله ما لكم من إله غيره هو أنشأكم من لأرض وستعمركم فيها فستغفروه ثم توبوا إليه إن ربي قريب مجيب} {وإلى عاد أخاهم هودا قال ياقوم عبدوا الله ما

enormities and grave sins. Allah is sufficient for us, and an excellent Trustee is He. They also adduced the report that he ﷺ let his forelock hang down as the People of the Book did, then subsequently parted it, and that he liked to conform to the People of the Book in matters concerning which nothing had been sent down to him. Abu Muhammed said: This report is among the strongest arguments against them, because it explicitly states that he ﷺ liked to conform to the People of the Book only in matters concerning which nothing had been sent down to him. It is thus established that he ﷺ did this only in matters which he was permitted either to do or to leave undone, concerning which he had neither been prohibited nor commanded. This is other than the matter we are discussing. Our discussion concerns whether their laws are obligatory unless we are prohibited from them, or whether their binding force is absent until we are commanded to observe them. As for permissible appearance, parting the hair, and letting it hang down, doing or leaving any of these remains permissible even now. This is everything they have adduced; we have refuted their contentious objections concerning it. Success is through Allah Most High. We shall, if Allah Most High wills, set out the demonstrations that establish our position and invalidate theirs. There is neither power nor strength except through Allah, the Most High, the Magnificent. ʿAbd Allah ibn Yusuf related to us: Ahmad ibn Fath related to us: ʿAbd al-Wahhab ibn ʿIsa related to us: Ahmad ibn Muhammed related to us: Ahmad ibn ʿAli related to us: Muslim related to us: Abu Bakr ibn Abi Shayba and Yahya ibn Yahya related to us, the wording being his. Abu Bakr said: Hushaym related to us: Sayyar related to us: Yazid al-Faqir related to us: Jabir related to us. Yahya said: Hushaym informed us, on the authority of Sayyar, from Yazid al-Faqir, from Jabir ibn Abd Allah al-Ansari, that the Messenger of Allah ﷺ said: "I have been given five things that no one before me was given. Every prophet used to be sent specifically to his own people, whereas I have been sent to everyone, red and black." He mentioned the remainder of the report. Through the same chain to Muslim: Qutaybah ibn Saʿid and Ali ibn Hujr related to us; both said: Ismaʿil—namely, Ibn Jaʿfar—related to us, from al-ʿAla' ibn Abd al-Rahman, from his father, from Abu Hurayrah, that the Messenger of Allah ﷺ said: "I have been favored over

the prophets in six respects." He mentioned them, including: "I have been sent to all creation."

Abu Muhammed said: This report suffices against every contentious objection with which the proponents of falsehood have sought to deceive. It makes clear that every prophet before our Prophet ﷺ was sent specifically to his own people. Since that is so, it is established with certainty that people other than his own were not bound by the revealed law of a prophet other than their own prophet. Thus it is established with certainty that none of the prophets was sent to us except Muhammed ﷺ. Since this has been established, Allah Most High has said: {And to Thamud, their brother Salih. He said: "My people, worship Allah; you have no deity other than Him. He brought you into being from the earth and settled you in it. So seek His forgiveness, then repent to Him. My Lord is indeed near and responsive."} {And to ʿAd, their brother Hud. He said: "My people, worship Allah; you have no deity other than Him. Will you not then be mindful of Him?"} {And to Madyan, their brother Shuʿayb. He said: "My people, worship Allah; you have no deity other than Him. Clear evidence has come to you from your Lord. So give full measure and weight, do not deprive people of their things, and do not cause corruption on the earth after it has been set right. That is better for you, if you are believers."}

Concerning our Prophet ﷺ, Allah Most High said: {We have sent you only to all mankind, as a bearer of good tidings and a warner, but most people do not know.} Allah Most High said, commanding him to say: {Say: "People, I am the Messenger of Allah to you all—He to whom belongs the dominion of the heavens and the earth. There is no deity but Him; He gives life and causes death. So believe in Allah and His Messenger, the unlettered Prophet, who believes in Allah and His words, and follow him, so that you may be guided."} This addresses all people. Allah Most High commanded him to call humankind and the jinn to faith. Allah Most High said: {So that you may warn a people whose forefathers were not warned, and who are therefore heedless.} Thus it is established that they were not bound by the revealed law of any of the prophets. Allah Most High said: {People of the Scripture, Our Messenger has come to you, making clear to you, after an interval without

لكم من إله غيره أفلا تتقون} {وإلى مدين أخاهم شعيبا قال ياقوم عبدوا الله ما لكم من إله غيره قد جآءتكم بينة من ربكم فأوفوا لكيل ولميزان ولا تبخسوا لناس أشياءهم ولا تفسدوا في لأرض بعد إصلاحها ذلكم خير لكم إن كنتم مؤمنين} وقال تعالى في نبينا صلى الله عليه وسلم {ومآ أرسلناك إلا كآفة للناس بشيرا ونذيرا ولكن أكثر لناس لا يعلمون} وقال تعالى آمرا له أن يقول {قل يأيها لناس إني رسول لله إليكم جميعا لذي له ملك لسماوات ولأرض لا إله إلا هو يحيي ويميت فآمنوا بلله ورسوله لنبي لأمي لذي يؤمن بلله وكلماته وتبعوه لعلكم تهتدون} مخاطبا للناس كلهم وأمره تعالى أن يدعو الإنس والجن إلى الإيمان، وقال تعالى: {لتنذر قوما مآ أنذر آبآؤهم فهم غافلون} فصح أنهم لم يكونوا ملزمين شريعة أحد من الأنبياء وقال تعالى {يا أهل لكتاب قد جآءكم رسولنا يبين لكم على فترة من لرسل أن تقولوا ما جآءنا من بشير ولا نذير فقد جاءكم بشير ونذير ولله على كل شيء قدير} فعلمنا أن الشرائع التي بعث بها موسى عليه السلام لم تلزم غير بني إسرائيل حاشا التوحيد وحده على ما بينا قبل، وعلى ما بينه تعالى إذ يقول: {وقالوا كونوا هودا أو نصارى تهتدوا قل بل ملة إبراهيم حنيفا وما كان من لمشركين} {قولوا آمنا بلله ومآ أنزل إلينا ومآ أنزل إلى إبراهيم وإسماعيل وإسحاق ويعقوب ولأسباط ومآ أوتي موسى وعيسى وما أوتي لنبيون من ربهم لا نفرق بين أحد منهم ونحن له مسلمون * فإن آمنوا بمثل مآ آمنتم به فقد هتدوا وإن تولوا فإنما هم في شقاق فسيكفيكهم لله وهو لسميع لعليم}

messengers, lest you say: “No bearer of good tidings or warner has come to us.” A bearer of good tidings and a warner has indeed come to you, and Allah has power over all things.} Thus we know that the revealed laws with which Moses, peace be upon him, was sent did not bind anyone other than the Children of Israel, with the sole exception of the affirmation of Allah’s oneness, as we explained earlier, and as Allah Most High explained when He says: {They said: “Become Jews or Christians, and you will be guided.” Say: “Rather, the religion of Abraham, inclining exclusively to Allah; he was not one of the polytheists.”} {Say: “We believe in Allah, in what has been sent down to us, in what was sent down to Abraham, Ishmael, Isaac, Jacob, and the Tribes, and in what Moses was given and Jesus, and what the prophets were given from their Lord. We make no distinction between any of them, and to Him we submit.” * So if they believe in the like of what you believe in, they have indeed been guided; but if they turn away, they are merely in dissension. Allah will suffice you against them, and He is the All-Hearing, the All-Knowing.}[36][37][38]

L2313 Abu Muhammed said: This verse also establishes that what is binding upon us is that in which all the prophets whom Allah mentioned were equal. That is nothing other than the affirmation of Allah’s oneness alone. Otherwise, there is no disagreement among any of the Muslims that their revealed laws differed. Accordingly, all their revealed laws cease to bind us except that in which He made them equal, namely, the affirmation of Allah’s oneness alone. Whoever binds us to the revealed laws of the prophets before us has nullified the Prophet’s ﷺ distinction and declared him false in his statement

قال أبو محمد فصح بهذه الآية أيضا أن الذي تساوى فيه كل من ذكر الله من النبيين هو اللازم لنا وليس ذلك إلا التوحيد وحده، وإلا فلا خلاف بين أحد من المسلمين في أن شرائعهم كانت مختلفة فسقط عنا بذلك جميع شرائعهم إلا الذي سوى بينهم فيه وهو التوحيد فقط. ومن ألزمنا شرائع الأنبياء قبلنا فقد أبطل فضيلة النبي صلى الله عليه وسلم وأكذبه في إخباره أنه لم يبعث نبي إلا إلى قومه خاصة حاشا، لأن خصومنا يريدون منا اتباع شرائع من قبلنا فيوجبون بذلك أنهم مبعوثون إلينا، وهذا الباطل والكذب. ويبين هذا أيضا قوله تعالى: {ما يقال لك إلا ما قد قيل للرسل من قبلك إن ربك لذو مغفرة وذو عقاب أليم} وهذه صفة فعل الله تعالى الذي لم يزل حكمه موصوفا بها في خلقه في علمه وقال تعالى {أم كنتم شهداء إذ حضر يعقوب لموت إذ قال لبنيه ما تعبدون من بعدي قالوا نعبد إلهك وإله آبائك إبراهيم وإسماعيل وإسحاق إلها واحدا ونحن له مسلمون * تلك أمة قد خلت لها ما كسبت ولكم ما كسبتم

[36] **Translator’s note (L2309):** “The wording being his” refers to Yahya ibn Yahya in the preceding unit.

[37] **Translator’s note (L2310):** The Quranic quotations contain recurring transcriptional losses of initial letters, especially alifs, in otherwise recognizable words. The English follows the intelligible wording; these defective spellings are not treated as distinct Quranic readings. “Red and black” preserves the report’s expression for the full range of people.

[38] **Qur’an references (L2307):** Qur’an 7:73 (Al-A’raf); Qur’an 11:61 (Hud); Qur’an 7:65 (Al-A’raf); Qur’an 11:50 (Hud); Qur’an 23:23 (Al-Mu’minun); Qur’an 23:32 (Al-Mu’minun); Qur’an 7:85 (Al-A’raf); Qur’an 11:84 (Hud); Qur’an 34:28 (Saba); Qur’an 7:158 (Al-A’raf); Qur’an 36:6 (Ya-Sin); Qur’an 5:19 (Al-Ma’idah); Qur’an 2:135 (Al-Baqarah); Qur’an 2:136 (Al-Baqarah); Qur’an 3:84 (Ali ’Imran).

that no prophet was sent except specifically to his own people. Far be it! For our opponents want us to follow the revealed laws of those before us, thereby necessarily maintaining that those prophets were sent to us. This is falsehood and a lie.

This is also made clear by His saying, Most High: {Nothing is said to you except what has already been said to the messengers before you. Your Lord indeed possesses forgiveness and possesses painful punishment.} This is a description of the action of Allah Most High, by which His judgment concerning His creation has always been characterized in His knowledge. Allah Most High said: {Or were you witnesses when death came to Jacob, when he said to his sons: "What will you worship after me?" They said: "We shall worship your God and the God of your forefathers, Abraham, Ishmael, and Isaac, one God, and to Him we submit." * That was a community that has passed away. It has what it earned, and you have what you earned, and you will not be questioned about what they used to do.}

Abu Muhammed said: This is sufficient on this subject, because He, Most High—what He made them equal in, namely, worshipping Allah Most High alone and acknowledging that He alone is God. Then He, Most High, informed us that He would not question us about what those prophets used to do. Since we shall not be questioned about their deeds, everyone of sound perception knows with certainty that what we shall not be questioned about is not binding upon us. Had it been binding upon us, we would have been questioned about it.[39][40]

L2314–2316 All of this establishes what we have stated. These are necessary demonstrations from which there is no escape. Their deeds are the revealed laws with which they were sent. Thus, by the explicit text, seeking those laws has

ولا تسألون عما كانوا يعملون} قال أبو محمد: هذه كافية في هذا الباب لأنه تعالى ما سوى بينهم فيه وهو عبادة الله تعالى وحده والإقرار بأنه الإله وحده ثم أخبرنا تعالى أنه لا يسألنا عما كان أولئك الأنبياء يعملون، وإذا لم نسأل عن عملهم فقد تيقن كل ذي حس سليم أن ما لا نسأل عنه، فإنه غير لازم لنا، ولو كان لنا لازما لسئلنا عنه.

فصح بهذا كله ما ذكرنا وهي براهين ضرورية لا محيد عنها وأعمالهم هي شرائعهم التي بعثوا بها فقد سقط عنا بالنص طلبها، وإذ سقط عنا طلبها فقد سقط عنا حكمها، إذ لا سبيل إلى التزام حكم شيء إلا بعد معرفته، ولا سبيل إلى معرفته إلا بعد طلبه، وبالله تعالى التوفيق. وأما شريعة إبراهيم عليه السلام فهي شريعتنا هذه بعينها، ولسنا نقول: إن إبراهيم بعث إلى الناس كافة وإنما نقول إن الله تعالى بعث محمدا صلى الله عليه وسلم إلى الناس كافة بالشريعة التي بعث تعالى بها إبراهيم عليه السلام إلى قومه

[39] **Translator's note (L2313):** The isolated "Far be it!" translates حاشا as supplied. Its intended complement is unclear; an exception or an expression rejecting the implication may be intended. The sentence beginning "because He, Most High—what He made them equal in" is grammatically incomplete in the supplied Arabic, apparently lacking a verb or other connecting wording. The translation preserves the disruption rather than supplying an unmarked repair.

[40] **Qur'an references (L2313):** Qur'an 41:43 (Fussilat); Qur'an 2:133 (Al-Baqarah); Qur'an 2:134 (Al-Baqarah); Qur'an 2:141 (Al-Baqarah).

ceased to be incumbent upon us; and since seeking them has ceased to be incumbent upon us, their legal authority over us has ceased, since there is no way to commit oneself to the ruling of anything without first knowing it, and no way to know it without first seeking it. Success comes through Allah Most High.

As for the revealed law of Abraham, peace be upon him, it is this very revealed law of ours. We do not say that Abraham was sent to all mankind. We say only that Allah Most High sent Muhammed ﷺ to all mankind with the revealed law with which He, Most High, sent Abraham, peace be upon him, specifically to his own people, to the exclusion of all the other people of his time. Abraham's religion became binding upon us only because Muhammed ﷺ was sent to us with it, not because Abraham, peace be upon him, was sent with it. Allah Most High said: {Then We revealed to you: "Follow the religion of Abraham, inclining exclusively to Allah; he was not one of the polytheists."} Allah Most High said: {They said: "Become Jews or Christians, and you will be guided." Say: "Rather, the religion of Abraham, inclining exclusively to Allah; he was not one of the polytheists."}

Abu Muhammed said: The issue has thus become clear, and praise belongs to Allah, Lord of all worlds. Allah Most High abrogated for us part of Abraham's revealed law, just as He also abrogated for us part of what had been binding upon us of Muhammed's ﷺ revealed law. Among these matters is slaughtering children: it was abrogated for him, peace be upon him, just as it was also abrogated for us by His saying, Most High: {Say: "Come, I shall recite what your Lord has forbidden you: that you associate anything with Him; and show kindness to parents; do not kill your children because of poverty—We provide for you and for them; do not approach indecencies, whether outward or hidden; and do not kill the soul that Allah has made inviolable, except by right. This He has enjoined upon you, so that you may understand."} And by His saying, Most High: {And when the girl buried alive is asked * for what sin she was killed.} And by His saying, Most High: {Lost indeed are those who killed their children foolishly, without knowledge, and forbade what Allah had provided for them, fabricating a lie against Allah. They have indeed gone astray and were not guided.}

خاصة دون سائر أهل عصره وإنما لزمتنا ملة إبراهيم لأن محمدا صلى الله عليه وسلم بعث بها إلينا لا لأن إبراهيم عليه السلام بعث بها قال تعالى {ثم أوحينآ إليك أن تبع ملة إبراهيم حنيفا وما كان من لمشركين} وقال تعالى {وقالوا كونوا هودا أو نصارى تهتدوا قل بل ملة إبراهيم حنيفا وما كان من لمشركين} قال أبو محمد فانبلجت المسألة والحمد لله رب العالمين. ونسخ الله تعالى عنا بعض شريعة إبراهيم كما نسخ أيضا عنا بعض ما كان يلزمنا من شريعة محمد صلى الله عليه وسلم فمن ذلك ذبح الأولاد نسخ عنه عليه السلام كما نسخ عنا أيضا بقوله تعالى: {قل تعالوا أتل ما حرم ربكم عليكم ألا تشركوا به شيئا وبلوالدين إحسانا ولا تقتلوا أولادكم من إملاق نحن نرزقكم وإياهم ولا تقربوا لفواحش ما ظهر منها وما بطن ولا تقتلوا لنفس لتي حرم لله إلا بلحق ذلكم وصاكم به لعلكم تعقلون} وبقوله تعالى {وإذا لموءودة سئلت * بأى ذنب قتلت} وبقوله تعالى {قد خسر لذين قتلوا أولادهم سفها بغير علم وحرموا ما رزقهم لله فترآء على لله قد ضلوا وما كانوا مهتدين} ونسخ الاستغفار للمشركين بقوله تعالى {وما كان ستغفار إبراهيم لأبيه إلا عن موعدة وعدهآ إياه فلما تبين له أنه عدو لله تبرأ منه إن إبراهيم لأواه حليم} وبقوله تعالى {ما كان للنبي ولذين آمنوا أن يستغفروا للمشركين ولو كانوا أولي قربى من بعد ما تبين لهم أنهم أصحاب لجحيم} وقد وعد النبي صلى الله عليه وسلم عمه أبا طالب بالاستغفار كما وعد إبراهيم عليه السلام أباه بالاستغفار حتى نهى الله تعالى كليهما عن ذلك.

He abrogated seeking forgiveness for the polytheists by His saying, Most High: {Abraham's seeking forgiveness for his father was only because of a promise he had made to him. But when it became clear to him that he was an enemy of Allah, he disavowed him. Abraham was indeed much given to supplication and forbearing.} And by His saying, Most High: {It is not for the Prophet and those who believe to seek forgiveness for the polytheists, even if they are close relatives, after it has become clear to them that they are the inhabitants of Hellfire.} The Prophet ﷺ had promised his uncle Abu Talib that he would seek forgiveness for him, just as Abraham, peace be upon him, had promised his father that he would seek forgiveness for him, until Allah Most High forbade both of them to do so.[41][42]

وأما قول إبراهيم عليه السلام لقومه إذ رأى الكوكب {فلما رأى لقمر بازغا قال هذا ربي فلما أفل قال لئن لم يهدني ربي لأكونن من لقوم لضالين} فإنما كانت تقريرا لهم تبكيتا لا استدلالا ومعاذ الله أن يقول إبراهيم بالعبودية لأحد دون الله تعالى، ومن كان مثل إبراهيم سبقت له من الله تعالى سابقة علم في انتخابه للرساله والخلة لا يستدل بكبر الشمس على ربوبيتها وهو يرى الفلك أكبر منها، فصح أن ذلك توبيخ لهم على فساد استدلالهم في عبادتهم للنجوم وأن هذا إنما هو كما قال {ذق إنك أنت لعزيز لكريم} أي عند نفسك في الدنيا وعند قومك المغرورين وإلا فهو في تلك الحال الدليل المهان وقال قوم متكلفون متنطعون ماذا كانت شريعة النبي صلى الله عليه وسلم قبل أن ينبأ قال أبو محمد فالجواب وبالله تعالى التوفيق: أن يقال لهم في نفس سؤالكم جوابكم وهو قولكم أن ينبأ وأن لم يكن نبيا، فلم يكن مكلفا شيئا من الشرائع التي لم يؤمر بها ومن الهذيان أن يكون مأمورا بما لم يؤمر به، فصح أنه لم يكن ألزم شيئا من الشريعة حاشا التوحيد اللازم لقومه من عهد إبراهيم عليه السلام لولده ونسله حتى غيره عمرو بن لحي، وحاشا ما صانه الله تعالى عنه من الزنى، وكشف العورة والكذب والظلم، وسائر الفواحش والرذائل التي سبق في علم الله تعالى أنه سيحرمها

L2317–2319 As for what Abraham, peace be upon him, said to his people when he saw the star—{Then, when he saw the moon rising, he said, "This is my Lord." But when it set, he said, "Unless my Lord guides me, I shall surely be among the people who go astray"}—this was only a way of confronting them with their own position to confound them, not an inference. Allah forbid that Abraham should profess servitude to anyone other than Allah Most High! Someone such as Abraham, whose election to messengership and intimate friendship had already been established in Allah Most High's foreknowledge, would not infer the sun's lordship from its size while seeing that the celestial sphere is larger than it. Thus it is established that this was a rebuke to them for the unsoundness of their inference in worshipping the stars. This is only like His saying, {Taste! Indeed, you are the mighty, the noble!}—that is, in your own estimation in this world and in the estimation of your deluded people; otherwise, in that condition he is the guide, the humiliated one.

[41] **Translator's note (L2315):** In the quotation beginning "Come, I shall recite," the Arabic places the positive injunction to show kindness to parents within a passage introduced as what Allah has forbidden. The translation retains that syntactic shift without adding explanatory wording.

[42] **Qur'an references (L2314):** Qur'an 2:135 (Al-Baqarah); Qur'an 3:95 (Ali 'Imran); Qur'an 6:161 (Al-An'am); Qur'an 16:123 (An-Nahl); Qur'an 37:182 (As-Saffat); Qur'an 6:151 (Al-An'am); Qur'an 81:9 (At-Takwir); Qur'an 6:140 (Al-An'am); Qur'an 9:114 (At-Tawbah); Qur'an 9:113 (At-Tawbah).

Some affected, excessively punctilious people have said: "What was the Prophet's ﷺ religious law before he was made a prophet?" Abu Muhammed said: The answer—and success comes through Allah Most High—is to tell them: Your answer lies in your very question, namely your words, "was made a prophet." If he was not a prophet, he was not charged with any of the religious laws that he had not been commanded to follow. It is nonsense to say that he was commanded to do what he had not been commanded to do. Thus it is established that he had not been obligated to observe any religious law, except the affirmation of Allah's oneness, which was binding upon his people from the time of Abraham's injunction, peace be upon him, to his children and descendants, until ʿAmr ibn Luhayy altered it; and except those things from which Allah Most High protected him: fornication, exposing the private parts, lying, wrongdoing, and all the other indecencies and vices that Allah Most High had already known He would prohibit for him and for humankind. There is no deity but Him.

Some people have said that Noah was sent to all the inhabitants of the earth. Abu Muhammed said: This is an error, because it contradicts his ﷺ statement that every prophet other than himself was sent only to his own people specifically. Thus it is established that Noah, peace be upon him, was likewise, with no distinction. He Most High drowned those whom He drowned from outside Noah's people just as He drowned the children at that time and the other animals. Our Lord Most High does whatever He wills; none can overturn His judgment. The Prophet—may Allah bestow blessings upon him and grant him peace—was asked: "Shall we perish while there are righteous people among us?" He said: "Yes, when wickedness becomes abundant." And he ﷺ mentioned an army whom the earth would swallow up. He was asked: "O Messenger of Allah ﷺ, when among them are those under compulsion and others?" He ﷺ explained that, although the punishment would encompass them in this world, each person would be resurrected according to his intention on the Day of Resurrection—or words to this effect. Thus Allah Most High's destruction of those whom He destroyed by the Flood contains no evidence that Noah was sent to them all. Rather, the explicit text of the Quran establishes that Noah, peace be upon him, was absolutely never sent

عليه وعلى الناس، لا إله إلا هو. وقد قال قوم: إن نوحا بعث إلى أهل الأرض كلهم قال أبو محمد وهذا خطأ لأنه تكذيب لقوله صلى الله عليه وسلم إن كل نبي حاشاه إنما بعث إلى قومه خاصة فصح أن نوحا عليه السلام كذلك ولا فرق وإنما غرق تعالى من غرق من غير قومه كما غرق الأطفال حينئذ وسائر الحيوان، ويفعل ربنا تعالى ما شاء لا معقب لحكمه وقد قيل للنبي صلى الله عليه وسلم أنهلك وفينا الصالحون قال نعم إذا كثر الخبث وذكر صلى الله عليه وسلم جيشا يخسف بهم فقيل له يا رسول الله صلى الله عليه وسلم وفيهم المكره وغيره فأخبر صلى الله عليه وسلم أنهم وإن عمهم العذاب في الدنيا فكل أحد يبعث على نيته يوم القيامة أو كلاما هذا معناه، فليس في إهلاك الله تعالى من أهلك بالطوفان دليل على أن جميعهم بعث إليهم نوح، بل نص القرآن مثبت أن نوحا عليه السلام لم يبعث إلى غير قومه البتة بقوله تعالى: {إنآ أرسلنا نوحا إلى قومه أن أنذر قومك من قبل أن يأتيهم عذاب أليم} فمن ادعى أن قومه كانوا جميع أهل الأرض فقد كذب وقفا ما ليس له به علم

to anyone other than his own people, in His Most High's saying: {Indeed, We sent Noah to his people: "Warn your people before a painful punishment comes upon them."} Whoever claims that his people comprised all the inhabitants of the earth has therefore lied and pursued that of which he has no knowledge.[43][44]

L2320–2323 He has prohibited this in His saying: {And give the kinsman his due, and the needy and the wayfarer, and do not squander wastefully.} Nor does the revealed text state that all the inhabitants of the earth perished in the Flood, either in the Quran or in authentic hadith. Allah knows best, and we have no knowledge except what He has taught us. No virtuous person treats lying and speaking without knowledge lightly. We seek refuge in Allah from abandonment.

If someone invokes what was related to us on the authority of ʿAbd al-Rahman ibn ʿAbd Allah al-Hamdani: Abu Ishaq al-Mustamli related to us: al-Firabri related to us: al-Bukhari related to us: Ishaq ibn Nadr related to us: Muhammed ibn ʿUbayd related to us: Abu Hayyan related to us, on the authority of Abu Zurʿah, on the authority of Abu Hurayrah, who said: "We were with the Prophet ﷺ at a meal to which he had been invited. A foreleg was presented to him, and he was fond of it. He took a bite from it and said: 'I am the chief of humankind on the Day of Resurrection.'" Then he ﷺ described the Resurrection. The account includes the statement that people will come to Noah and say: "O Noah, you are the first of the messengers to the inhabitants of the earth." He related the remainder of the hadith.

Such a person should be told—and success comes through Allah Most High: You have no proof in this, because he did not say "to all the inhabitants of the earth." Some of the inhabitants of the earth may be designated "the inhabitants of the earth." We would not have considered it permissible to

وقد حرم ذلك بقوله {وآت ذا لقربى حقه ولمسكين وبن لسبيل ولا تبذر تبذيرا} ولا في النص أيضا أن جميع أهل الأرض هلكوا بالطوفان لا في القرآن ولا في الحديث الصحيح والله أعلم، ولا علم لنا إلا ما علمنا، والكذب، والقول بغير علم لا يستسهله فاضل، نعوذ بالله من الخذلان. فإن تعلق متعلق بما حدثناه عن عبد الرحمن بن عبد الله الهمداني، ثنا أبو إسحاق المستملي، ثنا الفربري، ثنا البخاري، ثنا إسحاق بن نضر، ثنا محمد بن عبيد، ثنا أبو حيان عن أبي زرعة عن أبي هريرة قال كنا مع النبي صلى الله عليه وسلم في دعوة فرفع إليه الذراع وكانت تعجبه فنهس منها نهسة وقال أنا سيد الناس يوم القيامة ثم ذكر صلى الله عليه وسلم صفة القيامة وفيه أن الناس يأتون نوحا فيقولون: يا نوح أنت أول الرسل إلى أهل الأرض وذكر باقي الحديث، قيل له وبالله تعالى التوفيق. ليس لك في هذا حجة لأنه لم يقل إلى جميع أهل الأرض، وبعض أهل الأرض يقع عليه اسم أهل الأرض، وما كنا لنستجيز تخصيص هذا العموم لولا ما ذكرنا قبل من رواية جابر وأبي هريرة وشهادتهما على رسول الله صلى الله عليه وسلم بأن كل نبي قبله إنما بعث إلى قومه خاصة حاشاه عليه السلام، فإنه بعث إلى الناس كافة، وفضل على جميع الأنبياء بذلك. وقد قال قوم: إن آدم عليه السلام بعث إلى ولده، وهم أهل الأرض قاطبة في وقتهم بلا شك. قال أبو محمد: وهذا شغب لا يصح، لأن الحديث الذي ذكرنا آنفا يبطل هذه الدعوى، وقد أخبر عليه السلام في هذا الحديث أن نوحا أول من بعث إلى أهل الأرض، وقد روى أن شيثا كان نبيا، وإذا كان ذلك فليس آدم مبعوثا إليه. فإن قال قائل: ومن أين استجزت الاحتجاج

[43] **Translator's note (L2317):** The discussion refers to Abraham seeing the star, while the supplied Quranic quotation begins with his seeing the moon (6:77). This mismatch is preserved. The supplied reading al-dalil means "the guide," producing the awkward expression "the guide, the humiliated one." The context suggests al-dhalil, "the abased," but the transcription has not been silently corrected.

[44] **Qur'an references (L2317):** Qur'an 6:77 (Al-An'am); Qur'an 71:1 (Nuh).

في دفع بعث آدم إلى أهل الأرض بنبوة شيث، ولم يأت في نص صحيح ولا في إجماع، وأنت تنكر مثل هذا على غيرك. قال أبو محمد: فنقول له وبالله تعالى التوفيق: وإنما قلنا ذلك لأنه قد صح عندنا بيقين أنه لم يبعث قط نبي إلى جميع الناس حاشا محمدا صلى الله عليه وسلم فمن قال إن آدم ونوحا أو غيرهما بعث إلى جميع الناس في زمانه فهو كاذب بلا شك مخالف لمحمد صلى الله عليه وسلم مبطل لفضيلته فلما صح ذلك عندنا علمنا أن آدم لا يخلو من أحد وجهين ضرورة لا ثالث لهما: إما أن يكون معه نبي آخر لم يبعث آدم إليه، أو يكون ولده لم يلزموا شريعة أبيهم آدم، وقد ينبأ المرء في مهده كما نبىء عيسى عليه السلام، فلعله قد ولد لآدم ولد نبىء في حين خروجه إلى الدنيا. فلا يكون آدم مبعوثا إليه والله أعلم، إلا أن اليقين الذي لا شك فيه أن آدم لم يبعث إلى جميع ناس عصره، ولا ناس هنالك إلا هو وامرأته حواء وولده فقط وبالله تعالى التوفيق

restrict this general wording were it not for what we mentioned earlier of the narration of Jabir and Abu Hurayrah and their testimony concerning the Messenger of Allah ﷺ: that every prophet before him was sent only to his own people specifically, except for him, peace be upon him, for he was sent to all humankind and was given precedence over all the prophets by this distinction.

Some people have said that Adam, peace be upon him, was sent to his children, who undoubtedly constituted all the inhabitants of the earth in their time. Abu Muhammed said: This is an invalid piece of contentious argument, because the hadith we have just mentioned refutes this claim. He, peace be upon him, stated in this hadith that Noah was the first to be sent to the inhabitants of the earth. It has also been narrated that Seth was a prophet. If that was so, Adam was not sent to him.

If someone says: "On what grounds did you consider it permissible to invoke Seth's prophethood as proof against Adam's having been sent to the inhabitants of the earth, when it is established neither in an authentic text nor by consensus, while you condemn others for doing such a thing?" Abu Muhammed said: We say to him—and success comes through Allah Most High: We said this only because it has been established for us with certainty that no prophet was ever sent to all humankind except Muhammed ﷺ. Thus whoever says that Adam and Noah or anyone else was sent to all humankind in his own time is undoubtedly a liar, contradicting Muhammed ﷺ and denying his distinction. Once this was established for us, we knew that Adam's case must necessarily fall under one of two alternatives, with no third possibility: either there was another prophet with him to whom Adam was not sent, or his children were not obligated to observe the religious law of their father Adam. A person may be made a prophet while in his cradle, as Jesus, peace be upon him, was made a prophet. Perhaps, then, a child was born to Adam who was made a prophet at the moment he came into the world, so that Adam would not have been sent to him. Allah knows best. Yet the certainty about which there is no doubt is that Adam was not sent to all the people of his age, and there were no people there other than

himself, his wife Eve, and his children alone. Success comes through Allah Most High.[45][46]

L2324–2325 As for his ﷺ statement in the hadith we mentioned just now that Noah was the first of the messengers to the inhabitants of the earth—while there is no doubt that Adam was a messenger of Allah, Mighty and Majestic—its meaning, as we understand it, and Allah knows best, is that Adam's mission, peace be upon him, was only to the inhabitants of heaven, speaking to them on behalf of Allah, Mighty and Majestic: {And He taught Adam all the names, then presented them to the angels and said: "Tell Me the names of these, if you are truthful"}; informing them of their names and greeting them with peace, as related in the Quran and authentic hadith. He was never sent to the inhabitants of the earth at all. The affirmation of Allah's oneness was revealed to his children and his wife; then a prophet from each group was sent to it. Then Noah was sent specifically to his own people with a religious law, as the Messenger of Allah ﷺ stated. He was also sent to the inhabitants of the earth with the punishment that encompassed them and all the animals, without doubt, rather than with a religious law that they were obligated to observe. This accords with what is authentically established in the Quran concerning his account, peace be upon him.

Whenever He Most High sent him, He undoubtedly sent him with some particular charge: this is inescapable. It was therefore necessary to determine what he was sent with to the inhabitants of the earth. We found it to be nothing other than the punishment encompassing everyone on earth, and we found that the explicit text states that he was sent specifically to his own people with his religious law. Thus the matter is established, and praise belongs to Allah. In this way all the hadiths and the Quran are reconciled.

[45] **Translator's note (L2320):** The Quranic quotation supplied here is 17:26, concerning the rights of relatives, the needy, and the wayfarer and the prohibition of squandering. It does not explicitly prohibit pursuing what one does not know; that wording occurs in 17:36. The apparent quotation error is preserved. The transmitter's name is supplied as Ishaq ibn Nadr; this reading has been retained.

[46] **Translator's note (L2322):** The verb translated "denying" continues into the following unit, where its object is "his distinction."

وأما قوله صلى الله عليه وسلم في الحديث الذي ذكرنا آنفا إن نوحا أول الرسل إلى أهل الأرض ولا شك في آدم رسول الله عز وجل، فإن معناه عندنا والله أعلم أن رسالة آدم عليه السلام إنما كانت لأهل السماء قائلا لهم عن الله عز وجل {وعلم آدم لأسمآء كلها ثم عرضهم على لملائكة فقال أنبئوني بأسمآء هؤلاء إن كنتم صادقين} ومنبئا لهم بأسمائهم، ومسلما عليهم على ما جاء في القرآن والحديث الصحيح، وإنه لم يبعث إلى أهل الأرض أصلا، وأن أولاده وامرأته أوحي إليهم التوحيد، ثم بعث إلى كل طائفة نبي منها، ثم بعث نوح إلى قومه خاصة بشريعة كما أخبر رسول الله صلى الله عليه وسلم وأرسل إلى أهل الأرض بالعذاب العام لهم ولجميع الحيوان بلا شك، لا شريعة ألزموها فهذا موافق لما صح في القرآن من خبره عليه السلام. وكل ما أرسله تعالى فبلا شك أنه إنما أرسله بأمر ما، هذا ما لا بد منه، فوجب أن يعرف بماذا أرسل إلى أهل الأرض؟ فلم نجده إلا العذاب العام لكل من في الأرض، ووجدنا النص قد جاء بإرساله إلى قومه خاصة بشريعته فصح الأمر ولله الحمد. وبهذا تتألف الأحاديث كلها والقرآن، وقد روينا في هذا الحديث تأويلا آخر: عن قتادة والحكم، وهو ما حدثناه أحمد بن عمر العذري، ثنا أبو ذر عبد بن السرخسي، قال: ثنا إبراهيم بن خزيم قال: ثنا عبد بن حميد، قال: حدثني يونس، عن شيبان، عن قتادة قال: بعث نوح حين بعث الشريعة بتحليل الحلال وتحريم الحرام،

We have transmitted another interpretation of this hadith on the authority of Qatadah and al-Hakam. It is what Ahmad ibn ʿUmar al-ʿUdhri related to us: Abu Dharr ʿAbd ibn al-Sarakhsi related to us, saying: Ibrahim ibn Khuzaym related to us, saying: ʿAbd ibn Humayd related to us, saying: Yunus related to me on the authority of Shayban, on the authority of Qatadah, who said: "When Noah was sent, he was sent with the religious law, declaring lawful what is lawful and prohibiting what is forbidden."[47][48][49]

L2326–2327 And through the same chain back to ʿAbd, who said: Abu Nuʿaym related to us: Ibn Abi Ghaniyyah related to us, on the authority of al-Hakam, He said: Noah brought the revealed law prohibiting sisters, mothers, and daughters. Abu Muhammed said: These two imams thus interpreted Noah as the first to have been sent with prohibitions and permissions. What appears correct to us, however, is what we presented first. Allah knows best. Glory be to You, O Allah, and praise be to You. I testify that there is no deity but You. I seek Your forgiveness and repent to You.

وبه إلى عبد قال: حدثنا أبو نعيم، ثنا ابن أبي غنية، عن الحكم قال: جاء نوح بالشريعة بتحريم الأخوات والأمهات والبنات. قال أبو محمد: فتأول هذان الإمامان أن نوحا أول من بعث بالتحريم والتحليل والذي يظهر إلينا، فالذي قدمنا أولا، والله أعلم. سبحانك اللهم وبحمدك أشهد أن لا إله إلا أنت أستغفرك وأتوب إليك

[47] **Translator's note (L2324):** The supplied Quranic quotation is 2:31. Its speaker is Allah, while the surrounding wording describes Adam speaking to the angels on Allah's behalf. This apparent mismatch is preserved. The transmission chain supplies the unusual name "Abu Dharr ʿAbd ibn al-Sarakhsi." It appears corrupt or incomplete and has been retained without reconstruction.

[48] **Translator's note (L2325):** The construction connecting "was sent" with "the religious law" is grammatically irregular in the supplied Arabic. The translation gives its apparent sense.

[49] **Qur'an references (L2324):** Qur'an 2:31 (Al-Baqarah).