

PRECISION IN THE FOUNDATIONS OF LEGAL RULINGS

الباب 37: دليل الخطاب

Chapter 37: Contrary Implication

Ibn Ḥazm · Arabic–English parallel edition

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[الباب السابع والثلاثون في دليل الخطاب]

قال أبو محمد هذا مكان عظيم فيه خطأ كثير من الناس وفحش جدا، واضطربوا فيه اضطرابا شديدا، وذلك أن طائفة قالت إذا ورد نص من الله تعالى أو من رسوله صلى الله عليه وسلم معلقا بصفة ما أو بزمان ما أو بعدد ما فإن ما عدا تلك الصفة، وما عدا ذلك الزمان. وما عدا ذلك العدد، فواجب أن يحكم فيه بخلاف الحكم في هذا المنصوص، وتعليق الحكم بالأحوال المذكورة دليل على أن ما عداها مخالف لها، وقالت طائفة أخرى، وهم جمهور أصحاب الظاهريين وطوائف من الشافعيين منهم أبو العباس بن سريج وطوائف من المالكيين، إن الخطاب إذا ورد كما ذكرنا لم يدل على أن ما عداه بخلافه، بل كان موقوفا على دليل. قال أبو محمد: هذا القول هو الذي لا يجوز غيره، وتمام ذلك في قول أصحابنا الظاهريين، أن كل خطاب وكل قضية فإنما تعطيك ما فيها، ولا تعطيك حكما في غيرها، لا أن ما عداها موافق لها، ولا أنه مخالف لها، لكن كل ما عداها موقوف على دليله.

وتحير في هذا بعض أصحاب القياس من الحنفيين والشافعيين والمالكيين، كأبي الحسين القطان الشافعي، وأبي الفرج القاضي المالكي، لما رأوا عظيم تناقضهم في هذا الباب فقالوا: دليل الخطاب على مراتب، فمنه ما يفهم منه أن ما عدا القضية التي خوطبنا بها فحكمها كحكم هذه التي خوطبنا. ومنه ما لا يفهم منه أن ما عدا القضية التي خوطبنا بها فحكمها بخلاف حكم هذه التي خوطبنا. ومنه ما لا يفهم أن ما عدا القضية التي خوطبنا بها موافق لحكم هذه التي خوطبنا بها ولا مخالف.

[Chapter Thirty-Seven: On Contrary Implication (dalil al-khitab)]

Abu Muhammed said: This is a matter of great importance in which many people have committed exceedingly gross errors and become severely confused. One group said: When a text from Allah Most High or His Messenger (may Allah bless him and grant him peace ﷺ) makes a ruling dependent upon a particular attribute, time, or number, then whatever falls outside that attribute, time, or number must receive a ruling contrary to the ruling concerning what the text specifies. Making the ruling dependent upon the aforementioned circumstances is evidence that whatever falls outside them differs from them. Another group—the majority of the adherents of the literalist school, groups of Shafiʿis, including Abu al-ʿAbbas ibn Surayj, and groups of Malikis—said: When an address occurs as we have described, it does not indicate that whatever falls outside it has a contrary ruling; rather, its ruling awaits evidence. Abu Muhammed said: This is the only admissible position. Its full expression is found in the statement of our fellow literalists: Every address and every proposition conveys only what it contains; it conveys no ruling concerning anything else, neither that whatever falls outside it agrees with it nor that it differs from it. Rather, everything outside it awaits its own evidence.

Some advocates of analogy among the Hanafis, Shafiʿis, and Malikis became perplexed over this, such as Abu al-Husayn al-Qattan the Shafiʿi and Abu al-Faraj the Maliki judge, when they saw the enormous contradictions in their positions on this subject. They said: Implication from the wording of an address has different levels. In some instances, one understands from it that whatever falls outside the proposition addressed to us has the same ruling as the proposition addressed to us. In some instances, one does not understand from it that whatever falls outside the proposition addressed to us has a ruling contrary to that of the proposition addressed to us. In some instances, one does not understand that whatever falls outside the proposition addressed to

us either agrees with or differs from the ruling of the proposition addressed to us.[1]

L2774 They illustrated the first category with His words, Most High: {Your Lord has decreed that you worship none but Him, and show kindness to parents. If either or both of them reach old age with you, do not say to them, "Uff," nor rebuke them, but speak to them gracious words.} They said: Thus we understood that other than {Your Lord has decreed that you worship none but Him, and show kindness to parents. If either or both of them reach old age with you, do not say to them, "Uff," nor rebuke them, but speak to them gracious words.} And with many verses that we shall mention in the chapter on analogy in this book, if Allah Most High wills, because that is a more suitable place to mention them. They illustrated the second category with examples concerning which they were inconsistent. The Shafiʿis and Hanafis said: One such example is the statement of Allah's Messenger (may Allah bless him and grant him peace ﷺ), concerning freely grazing sheep: "For every forty sheep, one sheep." They said: This indicates that sheep other than freely grazing sheep are not subject to obligatory alms and do not have the same status as freely grazing sheep. The Malikis placed this report in the first category and said: Rather, it indicates only that sheep other than freely grazing sheep have the same status as freely grazing sheep. "The colors" said: This is like someone saying, "If Zayd enters the house, give him a dirham." It is understood that this is a condition imposed in his case: if he enters, he is given a dirham, and if he does not enter, he is given nothing. The Malikis illustrated this latter category with His words, Most High: {And horses, mules, and donkeys, for you to ride and as an adornment; and He creates what you do not know.} They said: Mentioning riding and adornment indicates that anything other than these two purposes is prohibited, such as eating and the like. Abu Muhammed said: As for these perplexed people whom we mentioned last—meaning those who said that an address may indicate in some places that whatever falls outside it has a

[1] **Translator's note (L2773):** The second category contains an explicit negation, translated as supplied. This makes the classification awkward: the ensuing discussion treats the second category as implying a contrary ruling.

ومثلوا القسم الأول بقوله تعالى {وقضى ربك ألا تعبدوا إلا إياه وبالوالدين إحسانا إما يبلغن عندك لكبر أحدهما أو كلاهما فلا تقل لهما أف ولا تنهرهما وقل لهما قولا كريما} قالوا: ففهمنا أن غير {وقضى ربك ألا تعبدوا إلا إياه وبالوالدين إحسانا إما يبلغن عندك لكبر أحدهما أو كلاهما فلا تقل لهما أف ولا تنهرهما وقل لهما قولا كريما} وبآيات كثيرة سنذكرها في باب القياس من هذا الكتاب إن شاء الله تعالى، لأن ذلك المكان أمكن بذكرها. ومثلوا القسم الثاني بأمثلة اضطربوا فيها، فقال الشافعيون والحنفيون من ذلك قول رسول الله صلى الله عليه وسلم في سائمة الغنم في كل أربعين شاة شاة قالوا: فدل ذلك على أن ما عدا السائمة لا زكاة فيها وأنها ليست بمنزلة السائمة وأدخل المالكيون هذا الحديث في القسم الأول وقالوا: بل ما دل إلا أن غير السائمة بمنزلة السائمة، وقال الألوان: هذا بمنزلة من قال إذا دخل زيد الدار فأعطه درهما فيعلم أن هذا شرط فيه، وإنه إن دخل أعطى درهما وإن لم يدخل لم يعط شيئا. ومثل المالكيون هذا القسم الآخر بقوله تعالى {والخيل والبغال والحمير لتركبوها وزينة ويخلق ما لا تعلمون} قالوا: فدل ذكر الركوب والزينة على أن ما عداهما ممنوع كالأكل ونحوه. قال أبو محمد: فأما هؤلاء المتحيرون الذين ذكرنا آخرا، يعني الذين قالوا: إن الخطاب قد يدل في مواضع على أن ما عداه بخلافه، ويدل في مواضع أخر على أن ما عداه ليس بخلافه، فإنهم لعبوا في هذا المكان بالخطاب كما يلعب بالمخراق،

contrary ruling, while indicating in other places that whatever falls outside it does not have a contrary ruling—they have played with the address here as one plays with a rolled-cloth plaything.[2][3]

L2775–2776 At one time they ruled concerning what the text does not specify that what the text specifies indicates that its ruling is the same; at another time they ruled that what the text specifies indicates that its ruling is not the same. Would that I knew how two addresses could state rulings concerning two named things, yet one be understood to mean that what is not mentioned is like what is mentioned, and the other be understood to mean that what is not mentioned differs from what is mentioned! This is the opposite of what was understood from the first. By Allah, Allah Most High has created no intellect in which this could hold, except the intellect of someone who deceives himself and imagines something untenable through an assertion that no one would be unable to make the like of, without evidence. Anyone who has no concern for what he says can claim that he understood from a given expression something other than what that expression conveys.

L2777–2780 Abu Muhammed said: As for their clever ones, they called the first category analogy and the second implication from the wording of an address. By distinguishing a single meaning through two names, they supposed that they had thereby escaped contradiction. Yet they are just as entangled in it as those who call all of this implication from the wording of an address; there is no difference. We question them on the basis of their own statements, saying to them: What distinguishes your positions, when one group among you says that mentioning freely grazing livestock indicates that livestock other than freely grazing livestock have a contrary ruling, while another group says, “Rather, mentioning freely grazing livestock only that livestock other than freely grazing livestock agree with the ruling concerning freely

فمرة حكموا لغير المنصوص بأن المنصوص يدل على أن حكمه كحكمه، ومرة حكموا بأن المنصوص يدل على أن حكمه ليس كحكمه، فليت شعري كيف يمكن أن يكون خطابان يردان بالحكم في اسمين، فيفهم من أحدهم أن غير الذي ذكر مثل الذي ذكر، ويفهم من الآخر أن غير الذي ذكر بخلاف الذي ذكر؟. وهذا ضد ما فهم من الأول، وتالله ما خلق الله تعالى عقلا يقوم فيه هذا إلا عقل من غالط نفسه فتوهم ما لا يصح بدعوى لا يعجز عن مثلها أحد بلا دليل، وكل من لم يبال بما قال يقدر أن يدعي أنه فهم من هذا اللفظ غير ما يعطي ذلك اللفظ.

قال أبو محمد: وأما أكياسهم فإنهم سموا القسم الأول قياسا وسموا الثاني دليل الخطاب، فقد رأوا إذ فرقوا بين معنى واحد باسمين أنهم قد سلموا بذلك من التناقض، وهم من التورط فيه بمنزلة من سمى كل ذلك دليل الخطاب ولا فرق. ونحن نسألهم من كلامهم فنقول لهم: ما الفرق بينكم إذ قالت طائفة منكم: إن ذكر السائمة يدل على أن غير السائمة بخلاف السائمة، وقالت طائفة أخرى، بل ذكر السائمة إلا على أن غير السائمة موافق لحكم السائمة؟ ما الفرق بينكم وبين من عكس عليكم قولكم إن قول الله تعالى {ومن أهل لكتاب من إن تأمنه بقنطار يؤده إليك ومنهم من إن تأمنه بدينار لا يؤده إليك إلا ما دمت عليه قآئما ذلك بأنهم قالوا ليس علينا في لأميين سبيل ويقولون على الله لكذب وهم يعلمون} إن ذكر القنطار يدل على أن ما عدا القنطار مثل القنطار، فقال: بل ما يدل ذكر القنطار إلا على أن ما عدا القنطار بخلاف القنطار فقد يفزع الخائن من خيانته إذا كانت كثيرة، وقد يحتقر اليسير فلا يخونه، فهلا جعلتم القنطار

[2] **Translator’s note (L2774):** The first Quranic quotation is repeated in full after “we understood that other than,” leaving that statement grammatically incomplete. Both quotations and the incompleteness are preserved. “Uff” is an expression of irritation or disgust. The supplied reading al-alwan means “the colors” and appears corrupt in context; “the former group” may have been intended. The word mikhraq denotes a rolled or twisted cloth used as a plaything.

[3] **Qur’an references (L2774):** Qur’an 17:23 (Al-Isra); Qur’an 16:8 (An-Nahl).

grazing livestock"? What distinguishes you from someone who reverses your assertion that, in the words of Allah Most High, {Among the People of the Book is one who, if you entrust him with a great weight of wealth, will return it to you; and among them is one who, if you entrust him with a dinar, will not return it to you unless you remain standing over him. That is because they say, "We are under no liability concerning the unlettered," and they knowingly tell lies against Allah}, mentioning a great weight of wealth indicates that amounts other than a great weight of wealth are like that great weight of wealth? He could say: Rather, mentioning a great weight of wealth indicates only that amounts other than a great weight of wealth differ from it. A betrayer may indeed become frightened of his betrayal when the amount is large, and he may regard a small amount as insignificant and therefore not betray his trust over it. Why, then, did you not make the great weight of wealth here the threshold of a large amount, just as groups among you made his mention (may Allah bless him and grant him peace ﷺ) of two hundred dirhams, concerning the obligation of alms upon them, evidence that twenty dinars constitute a large amount, so that no one is required to swear an oath at the pulpit over less than that, and that anything below that is a small amount, concerning which an oath is sworn only in the judge's court? And other groups among you made his mention (may Allah bless him and grant him peace ﷺ) of a quarter-dinar, concerning amputating a thief's hand, evidence that a quarter-dinar constitutes a large amount and that anything other than it is a small amount, so that sexual access cannot be made lawful for less than it, nor may an oath be sworn at the pulpit over less than it. Other groups made what they transmitted of his mention (may Allah bless him and grant him peace ﷺ) of ten dirhams, concerning amputating a thief's hand, evidence that ten dirhams constitute a large amount and that anything below them is a small amount, so that sexual access cannot be made lawful for less than them. They even made this a limit on the deduction involved in the difference between a slave's value and the blood money for a free person. Abu Muhammed said: Among the passages from which they claimed to understand that what is left unmentioned has a ruling contrary to that of what is expressly specified is His statement, Most High: {Lodge them where you yourselves lodge, according to your means, and do not harm

ههنا حدا للكثير كما جعلت طوائف منكم ذكره صلى الله عليه وسلم المائتي درهم في وجوب الزكاة فيها دليلا على أن العشرين دينارا كثير، فلا يحلف عند المنبر أحد في أقل منها، وأن ما دونها قليل فلا يحلف فيها إلا في مجلس الحاكم وجعلت طوائف أخر منكم ذكره صلى الله عليه وسلم ربع الدينار في قطع السارق دليلا على أن ربع الدينار كثير وأن ما عداه قليل، فلا يستباح فرج بأقل منه، ولا يحلف عند المنبر في أقل منه وجعلت طوائف أخر ما رووا من ذكره صلى الله عليه وسلم عشرة دراهم في قطع السارق دليلا على أن العشرة دراهم كثيرة، وإن ما دونها قليل، فلا يستباح فرج بأقل منها، حتى جعلوا ذلك حدا فيما يسقط مما بين قيمة العبد ودية الحر. قال أبو محمد: ومما ادعوا فيه أنهم فهموا منه أن المسكوت عنه بخلاف حكم المنصوص عليه قوله تعالى: {أسكنوهن من حيث سكنتم من وجدكم ولا تضآروهن لتضيقوا عليهن وإن كن أولات حمل فأنفقوا عليهن حتى يضعن حملهن فإن أرضعن لكم فآتوهن أجورهن وأتمروا بينكم بمعروف وإن تعاسرتم فسترضع له أخرى} قالوا: فهذا يدل على أن غير الحامل بخلاف الحامل. قال أبو محمد: هذا خطأ، لأن المطلقة لا تخلو من أن يكون طلاقها رجعيا أو غير رجعي، فإن كان رجعيا فلها النفقة إذا كانت ممسوسة، كانت حاملا أو كانت غير حامل، باتفاق من جميعنا، وإن كان غير رجعي، فلا نفقة لها بنص السنة سواء كانت حاملا أو غير حامل، وإنما جاء النص المذكور في الطلاق الرجعي وبنص الآيات في قوله تعالى في الآية التي ابتدأ فيها في هذه السورة بتعليم الطلاق. ثم عطف سائر الآيات عليها: {فإذا بلغن أجلهن فأمسكوهن بمعروف أو فارقوهن بمعروف وأشهدوا ذوي عدل منكم وأقيموا لشهادة لله ذلكم يوعظ به من كان يؤمن بالله واليوم لآخر ومن يتق الله يجعل له مخرجا} وهذا لا يكون إلا في رجعي، وأمسك تعالى عن ذكر غير الحامل في هذه السورة، فبينت السنة أن التي هي موطوءة

them so as to make their circumstances straitened. If they are pregnant, then provide for them until they deliver their burden. If they nurse for you, give them their wages, and consult together in a fair manner. If you make matters difficult for one another, another woman will nurse for him.} They said: This indicates that a woman who is not pregnant has a ruling contrary to that of a pregnant woman. Abu Muhammed said: This is an error, because a divorced woman's divorce must be either revocable or irrevocable. If it is revocable, she is entitled to maintenance if the marriage has been consummated, whether she is pregnant or is not pregnant, by agreement among all of us. If, however, her divorce is irrevocable, she is entitled to no maintenance, by the explicit text of the Sunnah, whether she is pregnant or not pregnant. The aforementioned text concerns only revocable divorce, as also established by the explicit wording of the verses, in His saying, exalted is He, in the verse with which He began teaching the rules of divorce in this surah, then connected the remaining verses to it: {Then, when they reach their appointed term, retain them honorably or part with them honorably, and call two just men from among you to witness, and uphold testimony for Allah. By this is admonished whoever believes in Allah and the Last Day. Whoever fears Allah, He will make for him a way out.} This can concern only a revocable divorce. He, exalted is He, refrained from mentioning the woman who is not pregnant in this surah; the Sunnah then explained that a woman with whom intercourse has occurred and who is not pregnant has the same status as a pregnant woman, without any difference. No one is permitted to say, "Why was the woman who is not pregnant left unmentioned here?" If someone ventures to say this, he is told: "She was left unmentioned just as this surah left unmentioned divorce by compensation, the woman whose husband has died, annulment, and other matters." If they say, "Allah, exalted is He, mentioned that in other verses," they are told: "Likewise, He also mentioned the obligation of maintenance for the woman who is not pregnant through the Sunnah of His Prophet Muhammed ﷺ." Whoever wishes to find all legal rulings, in their entirety, in a single verse is devoid of reason, seeking

وليست حاملا بمنزلة الحامل ولا فرق، ولا يحل لأحد أن يقول: لم سكت عن ذكر غير الحامل ههنا؟ فإن قال ذلك مقدم، قيل له: سكت عن ذلك كما سكت فيها عن ذكر الخلع وعن ذكر المتوفى عنها زوجها وعن الفسخ وغير ذلك. فإن قالوا: قد ذكر الله تعالى ذلك في آيات أخر قيل: وكذلك أيضا قد ذكر وجوب النفقة لغير الحامل بسنة نبيه محمد صلى الله عليه وسلم ومن أراد أن يجد جميع الأحكام كلها في آية واحدة فهو عديم عقل متعلل في إفساد الشريعة، ويأبى الله إلا أن يتم نوره.

pretexts to corrupt the revealed law. Yet Allah refuses anything but to perfect His light.[4][5][6][7]

L2781–2792 They claimed that a group of scholars of language, including al-Mubarrad and Thaʿlab, held this position. Abu Muhammed said: As for bringing this subject within the domain of language, that is feeble obfuscation and worthless misrepresentation. Experts in language are needed only to identify the assembled letters of which words consist and to tell us to which named things those combinations apply. As for knowing whether something that they have acknowledged to us is not denoted by a particular name falls within the ruling of a statement concerning that name, or does not fall within its ruling, this lies neither within the competence of linguistic scholarship nor among its requisite concerns. Only someone who has confused the sciences and whose ability falls short of distinguishing between them would think this. This is a matter found in the natural capacities of Arabs and non-Arabs alike. Even if this were authentically reported from Thaʿlab, al-Mubarrad, al-Asmaʿi, and Khalaf along with them, their statement would stand alongside the statement of all scholars of language, from first to last, without disagreement among them—indeed, the statement of the speakers of every human language, Arab and non-Arab—that the word “stone” does not convey “horse,” and that the word “camel” does not convey “dog,” and that someone’s saying, “Today I rode in a ship,” does not convey that he also rode a donkey or that he did not ride it, and that someone’s saying, “I ate bread,” does not convey whether he ate meat with the bread or did not eat it. The testimony of all intellects,

وادعوا أن جماعة من أهل اللغة منهم المبرد وثعلب قالوا بذلك. قال أبو محمد: أما إدخال هذا الباب في اللغة فتمويه ضعيف وإيهام ساقط، لأن اللغة إنما يحتاج فيها إلى أربابها في معرفة الحروف المجموعة التي تقوم منها الكلمات، وأن يخبرونا على ماذا تركبت من المسميات فقط. وأما معرفة هل يدخل في حكم الخبر عن الاسم ما قد أقروا لنا أنه ليس يقع عليه ذلك الاسم أو لا يدخل في حكمه، فليس هذا في قوة علم اللغة ولا من شروطها، إنما يظن هذا من اختلطت عليه العلوم ولم تبلغ قوته أن يفرق بينها. وهذا أمر موجود في طبائع العرب والعجم، وحتى لو صح ذلك عن ثعلب وعن المبرد وعن الأصمعي وخلف معهم لكان قولهم مع قول جميع أهل اللغة أولهم عن آخرهم بلا خلاف منهم، بل قول أهل كل لغة للناس من عرب وعجم إن اسم حجر لا يفهم منه فرس، وإن اسم جمل لا يفهم منه كلب. وإن من قال: ركبت اليوم سفينة أنه لا يفهم منه أنه ركب أيضا حمارا، أو أنه لم يركبه، وأن من قال أكلت خبزا أنه لا يفهم منه أكل لحما مع الخبز أم لم يأكله؟ ولكان في شهادة العقول كلها باتفاقها على صحة ما ذكرنا كغاية في إبطال قول من قال بخلاف ذلك كائنا من كان ومبين صدق من قال إنما عدا الخبر المخبر به موقوف على دليله. قال أبو محمد واعترض بعضهم بما روي عن رسول الله صلى الله عليه وسلم من قوله في الاستغفار لمن مات من المنافقين: لأزيدن على السبعين فقال هذا القائل: في هذا دليل على أن ما عدا السبعين يغفر لهم به ولا بد. قال أبو محمد: وهذا خطأ من وجهين أحدهما أن ذلك دعوى بلا دليل ولو قطع صلى الله عليه وسلم بذلك لكان حقا ولكنه لم يقطع على ذلك وأنه لما يئس من المغفرة لهم بالسبعين رجا بالزيادة، وهذا الحديث من أعظم حجة عليهم في دعواهم التي نسوا أنفسهم فيها فقالوا: إن ما عدا القنطار في

[4] **Translator’s note (L2777):** The second group’s quoted statement is grammatically defective in the supplied text: the construction corresponding to “only” lacks the expected negative verb, “does not indicate.” Its apparent meaning is that mentioning freely grazing livestock indicates only agreement in ruling, but the defect has been retained. “A great weight of wealth” renders qintar, a large measure or quantity of wealth.

[5] **Translator’s note (L2778):** Making sexual access lawful refers here to the minimum marriage payment. The wording about the deduction between a slave’s value and a free person’s blood money is compressed; the precise calculation is not stated in this passage.

[6] **Translator’s note (L2780):** The assertion that an irrevocably divorced woman receives no maintenance whether pregnant or not reproduces the supplied text without correction.

[7] **Qur’an references (L2777):** Qur’an 3:75 (Ali ’Imran); Qur’an 65:6 (At-Talaq); Qur’an 65:2 (At-Talaq).

agreeing upon the soundness of what we have mentioned, would be the utmost refutation of anyone who says otherwise, whoever he may be, and would demonstrate the truthfulness of whoever says that whatever lies beyond the information actually stated depends upon its own evidence. Abu Muhammed said: Some of them raised an objection based on what is related from the Messenger of Allah ﷺ concerning his saying, regarding asking forgiveness for those hypocrites who had died, "I shall certainly exceed seventy." This speaker said: "This is evidence that, through what exceeds seventy, they must necessarily be forgiven." Abu Muhammed said: This is mistaken in two respects. The first is that this is a claim without evidence. Had he ﷺ asserted it decisively, it would have been true; but he did not assert it decisively. Rather, when he despaired of their being forgiven through seventy, he hoped for it through an increase. This report is among the strongest arguments against them in their claim, in which they forgot themselves, saying that what falls outside the hundredweight in His saying, exalted is He, {If you wish to replace one wife with another, and you have given one of them a hundredweight, take nothing of it. Would you take it through slander and manifest sin?}, and what falls outside saying "Uff" 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 in your care, do not say "Uff" to them, nor rebuke them, but address them with honorable words}, have the same status as the hundredweight and "Uff." Why, then, did they not say that what falls outside seventy has the same status as seventy, just as they said that what falls outside seventy has the same status as seventy, just as they said that what falls outside the hundredweight has the same status as the hundredweight? Or why did they not say that what falls outside the hundredweight differs from the hundredweight, just as they said that what falls outside seventy differs from seventy? Indeed, Allah, exalted is He, has declared their statement false by revealing: {It is the same for them whether you ask forgiveness for them or do not ask forgiveness for them: Allah will never forgive them. Indeed, Allah does not guide the defiantly disobedient people}, and by His forbidding His Prophet ﷺ to perform the funeral prayer over them altogether. Thus, through this general verse, He, exalted is He, explained that what falls outside seventy has the same status as seventy. Let

قوله تعالى {وإن أردتم ستبدال زوج مكان زوج وآتيتم إحداهن قنطارا فلا تأخذوا منه شيئا أتأخذونه بهتانا وإثما مبينا} وما عدا الأف من قوله تعالى {وقضى ربك ألا تعبدوا إلا إياه وبالوالدين إحسانا إما يبلغن عندك لكبر أحدهما أو كلاهما فلا تقل لهما أف ولا تنهرهما وقل لهما قولا كريما} بمنزلة القنطار والأف فهلا قالوا: إن ما عدا السبعين بمنزلة السبعين، كما قالوا: إن ما عدا السبعين بمنزلة السبعين، كما قالوا: إن ما عدا القنطار بمنزلة القنطار أو هلا قالوا: إن ما عدا القنطار بخلاف القنطار. كما قالوا: إن ما عدا السبعين بخلاف السبعين، بل قد أكذب الله تعالى قولهم بإنزاله: {سواء عليهم أستغفرت لهم أم لم تستغفر لهم لن يغفر الله لهم إن الله لا يهدي لقوم لفسقين} وبنهيه تعالى نبيه صلى الله عليه وسلم عن الصلاة عليهم جملة فبين تعالى بهذه الآية العامة أن ما عدا السبعين بمنزلة السبعين. ولا يظن جاهل أننا بهذا القول يلزمنا أن ما عدا المنصوص عليه له حكم المنصوص، ومعاذ الله من ذلك، ولو ظننا ذلك كما ظنوا لكنا مخالفين لرسول الله صلى الله عليه وسلم إذ رجا أن يكون ما عدا السبعين بخلاف السبعين، فإننا لم نقل إن بذكر السبعين وجب أن يكون ما عدا السبعين موافقا للسبعين ولا مخالفا لها، بل قلنا: ممكن أن يكون ما عدا السبعين موافقا للسبعين في ألا يغفر لهم، وممكن أن يكون بخلاف السبعين في أن يغفر لهم. وإنما ننتظر في ذلك ما يرد في البيان كما فعل رسول الله صلى الله عليه وسلم ولا فرق ثم ينزل الله تعالى ما شاء إما بموافقة لما قد ذكر وإما بمخالفة له، وكان الأصل إباحة الاستغفار جملة بقوله عز وجل: {خذ من أموالهم صدقة تطهرهم وتزكيهم بها وصل عليهم إن صلواتك سكن لهم والله سميع عليم} والصلاة ههنا الدعاء بلا خلاف، والاستغفار دعاء، وهو نوع من أنواع الدعاء، فلما نص على خروج السبعين من جملة الدعاء لهم، كان ما بقي على ظاهر الإباحة المتقدمة، حتى نهى عن الاستغفار لهم جملة، وعن الصلاة عليهم البتة. وقد جاء نص الحديث هكذا كما قلنا من أخباره صلى الله عليه وسلم أنه مخير

no ignorant person suppose that, by this statement, we are committed to holding that whatever falls outside what is explicitly specified has the ruling of what is explicitly specified. Allah forbid that! Had we supposed this, as they supposed it, we would have contradicted the Messenger of Allah ﷺ, since he hoped that what falls outside seventy would differ from seventy. We have not said that mentioning seventy necessarily requires what falls outside seventy either to agree with seventy or to differ from it. Rather, we have said that what falls outside seventy may agree with seventy in their not being forgiven, and may differ from seventy in their being forgiven. We simply await whatever clarification comes concerning this, precisely as the Messenger of Allah ﷺ did, without any difference. Then Allah, exalted is He, reveals whatever He wills, either in agreement with what has already been mentioned or in difference from it. The original rule was the unrestricted permissibility of asking forgiveness, by His saying, mighty and majestic is He: {Take from their wealth an alms offering by which you cleanse and purify them, and pray for them. Indeed, your prayers are a source of tranquility for them, and Allah is All-Hearing, All-Knowing.} "Prayer" here means supplication, without disagreement, and asking forgiveness is supplication: it is one of the kinds of supplication. Thus, when He explicitly excluded seventy from the general scope of supplication for them, what remained continued under the apparent meaning of the preceding permission, until He prohibited asking forgiveness for them altogether and performing the funeral prayer over them entirely. The explicit wording of the report has come down just as we have said, through his ﷺ stating that he had been given a choice in this matter; so he followed the apparent meaning of the wording. ʿAbd Allah ibn Yusuf related it to us, from Ahmad ibn Fath, from ʿAbd al-Wahhab ibn ʿIsa, from Ahmad ibn Muhammed, from Ahmad ibn ʿAli, from Muslim: Abu Bakr ibn Abi Shaybah related to us: Abu Usamah related to us: related to us ʿUbayd Allah ibn ʿUmayr, from Nafiʿ, from Ibn ʿUmar, that the Messenger of Allah ﷺ said, when ʿUmar objected to his performing the funeral prayer over ʿAbd Allah ibn Ubayy: "Allah merely gave me a choice, saying: {You will ask forgiveness for them, or do not ask forgiveness for them. If you ask forgiveness for them seventy times, Allah will never forgive them. That is because they disbelieved in Allah and His Messenger, and Allah does not guide the defi-

في ذلك فأخذ بظاهر اللفظ حدثناه عبد الله بن يوسف عن أحمد بن فتح، عن عبد الوهاب بن عيسى، عن أحمد بن محمد، عن أحمد بن علي، عن مسلم، نا أبو بكر بن أبي شيبة، نا أبو أسامة، نا عبيد الله بن عمير عن نافع عن ابن عمر أن رسول الله صلى الله عليه وسلم قال حين اعترضه عمر في الصلاة على عبد الله بن أبي إنما خيرني الله فقال {ستغفر لهم أو لا تستغفر لهم إن تستغفر لهم سبعين مرة فلن يغفر لله لهم ذلك بأنهم كفروا بالله ورسوله والله لا يهدي لقوم لفاسقين} وسأزيد على السبعين فأخذ صلى الله عليه وسلم بظاهر اللفظ في التخيير والأصل المتقدم في إباحة الاستغفار، حتى نهى عن ذلك جملة. وقال بعضهم: ما عدا الاسم المذكور فبخلاف المذكور إلا أن تقترن إليه دلالة. قال أبو محمد: فنقول له: ما الفرق بينك وبين من عارضك من أهل مذهبك؟ أراد أن ينصر القياس نفسه، كما أردت أنت أن تنصر دليل الخطاب فنسيت نفسك، فقال لك: ما عدا الاسم المذكور فهو داخل في حكم المذكور ما لم تقترن إليه دلالة. قال أبو محمد: وهكذا يعرض للحمل المائل المرتب على غير اعتدال، وبخلاف القوام إذا أراد صاحبه أن يعدل أحد شقيه مال عليه الآخر، ثم يقال لهم جميعا: ما هذه الدلالة المقترنة التي يشير كل واحد منكما إليها؟ أهي كهانة منكم، أم هي طبيعية توجب ضرورة، فهم ما ذكر كل واحد منكما على تضادكما؟، أم هي نص واحد فهم لا يدعون كهانة، فلم يبق إلا أن يقولوا هي ضرورة توجب فهم كل ما لم يذكر أو أن يقولوا هو نص يبين حكم ما لم يذكره في هذا النص الآخر، فأي ذلك قالوا فقد وافقونا في قولنا: إنه لا يدل شيء مذكور على شيء لم يذكر، وإن الذي لم يذكر في هذا النص فإنما ننتظر فيه نصا آخر، إلا أن توجب ضرورة ما أن نعرف حكمه كما أوجبت ضرورة الحس في قوله تعالى {هو لذي جعل لكم لأرض ذلولا فمشوا في مناكبها وكلوا من رزقه وإليه لنشور} إننا لا نقدر أن نمشي في الهواء ولا في السماء ولا أن نأكل من غير رزقه واحتج بعضهم في قول أبي عبيد في قوله صلى الله عليه

وسلم لأن يمتلىء جوف أحدكم قيحا حتى يريه خير له من أن يمتلىء شعرا وأنكر أبو عبيد قول من قال: إن ذلك إنما هي في الشعر الذي هجي به رسول الله صلى الله عليه وسلم فقال أبو عبيد لو كان ذلك لكان قد أباح القليل من الشعر الذي هجي به رسول الله صلى الله عليه وسلم وذلك لا يحل قال أبو محمد وهذا لا حجة لهم فيه، بل هو على خلاف ما ظنوا، وهو أن الأصل أن رواية الشعر حلال باستنشاد النبي صلى الله عليه وسلم للأشعار وسماعه إياها وأما رواية ما هجي به صلى الله عليه وسلم فحرام سماعه وقراءته وكتابته وحفظه بقول الله تعالى {يأيها لذين آمنوا لا تدخلوا بيوت لنبي إلا أن يؤذن لكم إلى طعام غير ناظرين إناه ولكن إذا دعيتم فدخلوا فإذا طعمتم فنتشروا ولا مستأنسين لحديث إن ذلكم كان يؤذي لنبي فيستحيي منكم ولله لا يستحيي من لحق وإذا سألتموهن متاعا فسألوهن من ورآء حجاب ذلكم أطهر لقلوبكم وقلوبهن وما كان لكم أن تؤذوا رسول لله ولا أن تنكحوا أزواجه من بعده أبدا إن ذلكم كان عند لله عظيما} وبقوله تعالى آمرا بتعزيره وتوقيره في غير ما آية. فلما جاء النهي عن امتلاء الجوف من الشعر كان ذلك مخرجا لكثير منه من جمله كله المباح وبقي ما دون الامتلاء مما سوى هجو النبي صلى الله عليه وسلم على الإباحة وحد الامتلاء هو ألا يكون للإنسان علم إلا الشعر فقط، وحد ما دون الامتلاء أن يعلم المرء ما يلزمه ويروي مع ذلك من الشعر ما شاء. واحتجوا أيضا بقول أبي عبيد فيما روي عن النبي صلى الله عليه وسلم لي الواجد يحل عرضه وعقوبته أن ذلك مخرج لغير الواحد عن إحلال العرض والعقوبة. قال أبو محمد وليس هذا كما ظنوا ولكن لما أخبر صلى الله عليه وسلم أن أعراضنا علينا حرام وأن المسلم أخو المسلم لا يسلمه لا يظلمه. كان كل أحد حرام العرض والعقوبة، فلما جاء النص بتغيير المنكر باليد وكان لي الواجد منكرا لأنه منهي عنه، كان ذلك مدخلا لعقوبته في جملة تغيير المنكر المأمور به، ومخرجا له

antly disobedient people.} And I shall exceed seventy." Thus he ﷺ followed the apparent meaning of the wording as granting a choice, and the previously established original rule permitting requests for forgiveness, until this was prohibited altogether. Some of them said: "Whatever falls outside the name mentioned differs from what is mentioned, unless an accompanying indication is joined to it." Abu Muhammed said: We therefore say to him: "What difference is there between you and someone of your own school who opposes you, wishing to champion analogy itself just as you wished to champion the contrary implication of the wording, so that you forgot yourself, and who says to you: 'Whatever falls outside the name mentioned is included within the ruling of what is mentioned, unless an accompanying indication is joined to it'?" Abu Muhammed said: This is precisely what happens to a leaning load arranged without balance and contrary to proper alignment: when its owner wishes to straighten one of its two sides, the other tilts against him. Then they are all asked: "What is this accompanying indication to which each of you two points? Is it divination on your part, or is it something natural that necessarily compels an understanding of what each of you has stated, despite your mutual contradiction, or is it a single explicit text?" They do not claim divination, so nothing remains except for them to say, "It is a necessity that compels an understanding of everything that has not been mentioned," or to say, "It is an explicit text that explains the ruling of what He has not mentioned in this the other text. Whichever of these they say, they have agreed with us in our assertion that nothing mentioned indicates anything unmentioned, and that, concerning what is unmentioned in this text, we await another text, unless some necessity requires us to know its ruling, just as the necessity of sense perception requires, in His saying—exalted is He—{He is the One who made the earth tractable for you, so walk upon its slopes and eat of His provision, and to Him is the resurrection}, that we cannot walk in the air or in heaven, nor eat anything other than His provision. Some of them adduced as an argument Abu Ubayd's statement concerning his saying ﷺ: "For the belly of one of you to be filled with pus until it eats away at him is better for him than to be filled with poetry." Abu Ubayd rejected the statement of those who said that this applies only to poetry in which the Messenger of Allah ﷺ was lampooned. Abu Ubayd

said: “Were that so, he would have permitted a small amount of poetry in which the Messenger of Allah ﷺ was lampooned, and that is unlawful.” Abu Muhammed said: This provides them with no argument. Rather, the matter is contrary to what they supposed: the original rule is that transmitting poetry is lawful, as established by the Prophet’s ﷺ asking for poems to be recited and listening to them. As for transmitting that in which he ﷺ was lampooned, listening to it, reading it, writing it, and memorizing it are forbidden by Allah’s saying, exalted is He: {O you who have faith, do not enter the houses of the Prophet unless permission is given to you for a meal, without waiting for its readiness. But when you are invited, enter; and when you have eaten, disperse, without lingering sociably for conversation. That was causing the Prophet distress, but he is shy of you; whereas Allah is not shy of the truth. And when you ask them for some article, ask them from behind a screen. That is purer for your hearts and their hearts. It is not for you to distress the Messenger of Allah, nor ever to marry his wives after him. Indeed, that would be tremendous in Allah’s sight}; and by His saying, exalted is He, commanding that he be supported and revered in more than one verse. Thus, when the prohibition against filling the belly with poetry came, it excluded a large quantity of it from the entirety that had been permissible. What falls short of being filled, apart from lampooning the Prophet ﷺ, remained permissible. The defining limit of being filled is that a person should have no knowledge except poetry alone. The defining limit of what falls short of being filled is that a person should know what is incumbent upon him and, alongside that, transmit as much poetry as he wishes. They also adduced as an argument the statement of Abu Ubayd concerning what is transmitted from the Prophet ﷺ: “Delay by one who has the means makes his honor and his punishment lawful”—namely, that this excludes anyone other than ‘the one’ from the permissibility of impugning his honor and punishing him. Abu Muhammed said: This is not as they supposed. Rather, when he ﷺ informed us that our honor is inviolable among us, and that a Muslim is a Muslim’s brother, neither abandoning him nor wronging him, everyone’s honor and person were protected against violation and punishment. Then, when the text came commanding the changing of wrongdoing by hand, and delay by one who has the means was wrongdoing because it is

مما حرم من أعراض الناس جملة وعقوباتهم، هذا الذي لا يفهم ذو لب سواه، ولا ينفقه غيره، واحتجوا بأن الشافعي أحد أئمة أهل اللغة وقد قال إن ذكره صلى الله عليه وسلم السائمة دليل على أن ما عدا السائمة بخلاف السائمة. قال أبو محمد: أما إمامة الشافعي رحمه الله في اللغة والدين فنحن معترفون بذلك،

prohibited, this included his punishment within the commanded changing of wrongdoing, and excluded him from the general prohibition against violating people's honor and punishing them. This is that of which no person of understanding comprehends anything else, nor does he expend anything other than it. They argued that al-Shafi'i is one of the leading authorities among the scholars of the language, and that he said: "His ﷺ mentioning livestock that graze freely is evidence that livestock other than those that graze freely have a different ruling from those that graze freely." Abu Muhammed said: As for al-Shafi'i's standing as a leading authority in language and religion—may Allah have mercy on him—we acknowledge that.[8][9][10][11][12][13][14][15]

[8] **Translator's note (L2783):** The phrase «إنما عدا الخبر المخبر به» appears to have a word-division problem: the translation understands it as «إن ما عدا الخبر المخبر به», "that whatever lies beyond the information actually stated." The supplied wording also has the awkward «كغاية», rendered here as "the utmost."

[9] **Translator's note (L2784):** The repeated clause "just as they said that what falls outside seventy has the same status as seventy" is present in the supplied Arabic and has been retained, although it appears to be an accidental repetition. "Uff" is an expression of irritation or exasperation; it is retained as the particular utterance discussed in the argument.

[10] **Translator's note (L2786):** The final "related to us" introduces the transmitter named at the beginning of the next unit; its position follows the Arabic transmission formula.

[11] **Translator's note (L2787):** The transmitter is named «عبيد الله بن عمير», "'Ubayd Allah ibn 'Umayr," in the supplied text; this reading has been retained. The Quranic quotation begins with «ستغفر», literally "you will ask forgiveness," rather than the customary imperative «استغفر», "ask forgiveness." The translation retains the supplied reading, although the ensuing argument treats the wording as granting a choice. «دليل الخطاب» is rendered "the contrary implication of the wording": the inference that a case not mentioned has a ruling contrary to that of the case mentioned.

[12] **Translator's note (L2790):** "Until it eats away at him" renders the unvocalized يريه, understood as referring to pus consuming or damaging his internal organs.

[13] **Translator's note (L2791):** The source reads "other than the one" (غير الواحد), whereas the quoted report says "one who has the means" (الواجد). The former appears to be a transcription error, but its wording has been retained in the translation.

[14] **Translator's note (L2792):** The opening continues the preceding unit. The source reads ينفقه, literally "expends it," which produces an awkward statement here. It may be a corruption of يفقه, "understands," but has not been silently corrected.

[15] **Qur'an references (L2781):** Qur'an 4:20 (An-Nisa); Qur'an 17:23 (Al-Isra); Qur'an 63:6 (Al-Munafiqun); Qur'an 9:103 (At-Tawbah); Qur'an 9:80 (At-Tawbah); Qur'an 67:15 (Al-Mulk); Qur'an 33:53 (Al-Ahzab).

L2793–2798 But he—may Allah be pleased with him—is a human being who errs and is correct. Would that I knew where al-Shafi'i—may Allah have mercy on him—stood in relation to this inference when he said that His mention—exalted be His remembrance—that the slave to be freed for killing must be a believer is evidence that, where the religion of the slave to be freed for the declaration of a wife as forbidden like one's mother is left unmentioned, the ruling is the same as that explicitly stated concerning the slave to be freed for killing: that this slave too must be a believer. Would that I knew what difference there is between His mentioning, exalted is He, faith in the slave to be freed for killing, and his ﷺ mentioning freely grazing livestock in the report of Anas. Yet someone says: "The slave to be freed for the declaration of a wife as forbidden like one's mother, whose religion is left unmentioned, has the same ruling as the slave to be freed for killing, whose religion is mentioned. As for sheep other than those that graze freely, even though grazing is not mentioned in Ibn Umar's report, their ruling differs from that of freely grazing sheep." What difference is there between this and someone who reverses the ruling and says: "Rather, livestock other than those that graze freely have the same ruling as those that graze freely," as the Malikis say, "whereas the slave whose religion is left unmentioned has a different ruling from the slave whose religion is explicitly stated; thus, an unbelieving slave suffices for the declaration of a wife as forbidden like one's mother," as the Hanafis say? This is sufficient. As for us, we say: Had nothing concerning freely grazing livestock been transmitted except the report of Anas, we would not have imposed obligatory alms on livestock other than those that graze freely, because the original rule is that no obligatory alms are due from anyone unless a text imposes them. Had a text come only concerning freely grazing livestock, obligatory alms would have been due only on them. But when Ibn Umar's report came, imposing obligatory alms on every forty sheep, the report concerning freely grazing livestock concerned a portion of what was covered by the report mentioning sheep generally. We therefore imposed obligatory alms on sheep, whether they graze freely or do not graze freely. When He, exalted is He, explicitly stipulated a believing slave in the case of killing, we said: Only a believing slave suffices in the case of killing, as Allah, exalted is He, commanded. When He did not mention faith in the

ولكنه رضي الله عنه بشر يخطىء ويصيب، وليت شعري أين كان الشافعي رحمه الله عن هذا الاستدلال، إذ قال جل ذكره في رقبة القتل أن تكون مؤمنة دليل على أن المسكوت عنه من دين الرقبة في الظهار، بمنزلة المنصوص في رقبة القتل أن تكون أيضا مؤمنة؟ وليت شعري أي فرق بين ذكره تعالى الأيمان في رقبة القتل وذكره صلى الله عليه وسلم السائمة في حديث أنس فبقول قائل رقبة الظهار التي سكت عن ذكر دينها بمنزلة رقبة القتل التي ذكر دينها، وأما غير السائمة من الغنم، وإن كان السوم لم يذكر في حديث ابن عمر، فبخلاف السائمة، وما الفرق بين من عكس الحكم؟ فقال: بل غير السائمة بمنزلة السائمة كما قال المالكيون. وأما الرقبة المسكوت عن دينها فبخلاف الرقبة المنصوص على دينها، فتجزىء في الظهار كافرة كما قال الحنفيون؟ وفي هذا كفاية. وأما نحن فنقول: لو لم يرد في السائمة إلا حديث أنس لما أوجبنا زكاة في غير السائمة، لأن الأصل أن لا زكاة على أحد إلا أن يوجبها نص، فلو لم يأت نص إلا في السائمة لما وجبت زكاة إلا فيها، لكن لما ورد حديث ابن عمر بإيجاب زكاة كل أربعين من الغنم، كان حديث السائمة بعض الحديث الذي فيه ذكر الغنم جملة، فأوجبنا الزكاة في الغنم سائمة كانت أو غير سائمة، ولما نص تعالى في القتل على رقبة مؤمنة قلنا: لا يجزىء في القتل إلا مؤمنة، كما أمر الله تعالى، ولما لم يذكر الإيمان في رقبة الظهار، قلنا: يجزىء الظهار أي رقبة كانت كما قال تعالى سواء كانت كافرة أو مؤمنة، إلا أن المؤمنة أحب إلينا لقوله تعالى {ولا تنكحوا لمشركات حتى يؤمن ولأمة مؤمنة خير من مشركة ولو أعجبتكم ولا تنكحوا لمشركين حتى يؤمنوا ولعبد مؤمن خير من مشرك ولو أعجبكم أولئك يدعون إلى لنار والله يدعو إلى لجنة ولمغفرة بإذنه ويبين آياته للناس لعلهم يتذكرون} {ولمطلقات يتربصن بأنفسهن ثلاثة قروء ولا يحل لهن أن يكتمن ما خلق لله في أرحامهن إن كن يؤمن بلله وليوم لآخر وبعولتهن أحق بردهن في ذلك إن أرادوا إصلاحا ولهن مثل لذي عليهن بلمعروف وللرجال عليهن درجة ولله عزيز

slave to be freed for the declaration of a wife as forbidden like one's mother, we said: Any slave whatsoever suffices for that declaration, as He, exalted is He, said, whether an unbeliever or a believer, although a believing slave is more beloved to us, because of His saying, exalted is He: {And do not marry polytheistic women until they have faith. A believing slave woman is better than a polytheistic woman, even if she pleases you. And do not marry women to polytheistic men until they have faith. A believing slave man is better than a polytheistic man, even if he pleases you. Those invite to the Fire, while Allah invites to the Garden and forgiveness by His permission, and He makes His signs clear to people, so that they may take heed.} {And divorced women shall wait by themselves for three menstrual periods; it is not lawful for them to conceal what Allah has created in their wombs, if they have faith in Allah and the Last Day. Their husbands have a greater right to take them back during that time if they desire reconciliation. Women have rights corresponding to their obligations, according to what is right, and men have a degree above them. Allah is mighty, wise.} Nevertheless, an unbelieving slave suffices because of the generality of His mentioning, exalted is He, simply a slave. They also adduced as an argument the consensus of the Muslims that any number of wives beyond the explicitly stated four is forbidden. Abu Muhammed said: This does not arise in the manner they supposed. Rather, when He, exalted is He, commanded guarding the private parts generally, He categorically forbade women except only those whom He excepted. Furthermore, the Messenger of Allah ﷺ annulled the marriage in excess of four, his ruling ﷺ suffices in place of every other proof. Through Allah Most High comes success.

They adduced His words, Most High: {Divorced women shall wait by themselves for three menstrual periods. It is not lawful for them to conceal what Allah has created in their wombs, if they believe in Allah and the Last Day. Their husbands have a greater right to take them back during that time, if they desire reconciliation. Women have rights corresponding to their obligations, according to what is right, and men have a degree above them. Allah is Mighty, Wise.}

حكيم} إلا أن الكافرة تجزىء لعموم ذكره تعالى الرقبة فقط. واحتجوا أيضا بإجماع المسلمين على أن ما عدا المنصوص عليه من عدد الزوجات أن يكون أربعا حرام. قال أبو محمد: وليس هذا من الوجه الذي ظنوا، ولكنه لما أمر تعالى بحفظ الفروج جملة حرم النساء البتة إلا ما استثنى منهن فقط أيضا فإن رسول الله صلى الله عليه وسلم قد فسخ نكاح الزائدة على أربع فكفى حكمه صلى الله عليه وسلم من كل دليل سواه وبالله تعالى التوفيق واحتجوا بقوله تعالى {ولمطلقات يتربصن بأنفسهن ثلاثة قروء ولا يحل لهن أن يكتمن ما خلق الله في أرحامهن إن كن يؤمن بالله واليوم لآخر وبعولتهن أحق بردهن في ذلك إن أرادوا إصلاحا ولهن مثل لذي عليهن بلمعروف وللرجال عليهن درجة والله عزيز حكيم} قال أبو محمد وهذا لا حجة لهم فيه لأنه تعالى قد أباح لهن النكاح بالنص فقال عز وجل {ولذين يتوفون منكم ويذرون أزواجا يتربصن بأنفسهن أربعة أشهر وعشرا فإذا بلغن أجلهن فلا جناح عليكم فيما فعلن في أنفسهن بلمعروف والله بما تعملون خبير} قال أبو محمد والنكاح المباح من المعروف واحتجوا أيضا بقوله تعالى {ولوالدات يرضعن أولادهن حولين كاملين لمن أراد أن يتم لرضاعة وعلى لمولود له رزقهن وكسوتهن بلمعروف لا تكلف نفس إلا وسعها لا تضآر والدة بولدها ولا مولود له بولده وعلى لوارث مثل ذلك فإن أرادا فصالا عن تراض منهما وتشاور فلا جناح عليهما وإن أردتم أن تسترضعوا أولادكم فلا جناح عليكم إذا سلمتم مآ آتيتم بلمعروف وتقوا لله وعلموا أن لله بما تعملون بصير} قال أبو محمد وهذا لا حجة لهم فيه. لأن الأم إن أرادت أن ترضعه أقل من حولين أو أكثر من حولين فذلك مباح لها، ما لم يكن في الفطام قبل الحولين ضرر على الرضيع. وكنا نقول إنه لا يحرم إلا ما كان في الحولين من الرضاع، لأن الأصل أن الرضاع لا يحرم شيئا، فلما حرم تعالى نكاح النساء بالرضاع ووجدناه تعالى قد جعل حكم الرضاع الذي أمر به حولين وما زاد عن الحولين فليس مأمورا، ولكنه مباح، وجب أن يكون الرضاع المحرم هو

Abu Muhammed said: This contains no proof for them, because He Most High has expressly permitted them to marry. He, Mighty and Majestic, said: {Those among you who die and leave wives behind: they shall wait by themselves for four months and ten days. When they have reached the end of their appointed term, there is no blame upon you for what they do concerning themselves according to what is right. Allah is fully aware of what you do.}

Abu Muhammed said: Permissible marriage is among the things that are right.

They also adduced His words, Most High: {Mothers shall breastfeed their children for two complete years, for whoever wishes to complete the breastfeeding. The father shall provide their sustenance and clothing according to what is right. No soul is charged beyond its capacity. No mother shall be harmed through her child, nor any father through his child. The heir bears the like of that obligation. If the two desire weaning by mutual consent and consultation, there is no blame upon them. If you wish to have your children breastfed by others, there is no blame upon you, provided you hand over what you have given according to what is right. Be mindful of Allah, and know that Allah sees what you do.}

Abu Muhammed said: This contains no proof for them, because if the mother wishes to breastfeed him for less than two years or more than two years, that is permissible for her, provided that weaning before two years does not harm the nursing child. We used to maintain that only breastfeeding occurring within the two years establishes a prohibition of marriage, because the original presumption is that breastfeeding prohibits nothing. Since He Most High prohibited marriage to women on account of breastfeeding, and we found that He Most High had set the prescribed period for the breastfeeding He commanded at two years, while anything beyond the two years is not commanded but is permissible, it necessarily followed that the breastfeeding which establishes a prohibition is the commanded breastfeeding, to the exclusion of any other—unless proof concerning something else is established by an explicit text or consensus, in which case that must be followed. However, recourse must be had to the words of Allah Most High: {Forbidden to you are your mothers, your daughters, your sisters, your paternal aunts,

الرضاع المأمور به لا ما سواه، إلا أن يقوم دليل على ما سواه من نص أو إجماع فيصار إليه. ولكن المصير إلى قول الله تعالى: {حرمت عليكم أمهاتكم وبناتكم وأخواتكم وعماتكم وخالاتكم وبنات لأخ وبنات لأخت وأمهاتكم اللاتي أرضعنكم وأخواتكم من لرضاعة وأمهات نسآئكم وربائبكم للاتي في حجوركم من نسآئكم للاتي 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} وحمل ذلك على عمومه وكلام رسول الله صلى الله عليه وسلم إذ أخبر أن سالما وهو رجل ذو لحية تحرم عليه التي أرضعته لا يجوز مخالفة شيء من ذلك وبالله تعالى التوفيق. هذا على أن أكثر القائلين بدليل الخطاب المذكور قد جعلوا ما زاد على الحولين، بشهر، وقال بعضهم: بستة أشهر، وقال بعضهم: بسنة كاملة، بمنزلة الحولين، وحرموا بكل ذلك، تناقضا لما أصلوه، وهدما لما أسسوه، وبيانا منهم أن حكمهم بذلك من عند غير الله تعالى

your maternal aunts, your brothers' daughters, your sisters' daughters, your mothers who breastfed you, your sisters through breastfeeding, your wives' mothers, and your stepdaughters 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 issue from your loins, and that you should take two sisters together in marriage, except what has already occurred. Indeed, Allah is Forgiving, Merciful.} This must be understood in its general scope, as must the words of the Messenger of Allah—may Allah bestow blessings upon him and grant him peace—when he reported that the woman who breastfed Salim was forbidden to him in marriage, although he was a bearded man. It is impermissible to contravene any of that. Through Allah Most High comes success.

Moreover, most of those who uphold the aforementioned contrary implication have treated one month beyond the two years—and some said six months, while others said an entire year—as equivalent to the two years, and have established a prohibition of marriage through all of that. This contradicts the principles they laid down, demolishes the foundations they

established, and constitutes their own demonstration that their ruling on this comes from someone other than Allah Most High.[16][17][18][19][20][21]

L2799–2801 They argued, saying: ‘The Messenger of Allah ﷺ was given comprehensive expressions. It is therefore impossible for Allah, Mighty and Majestic, or His Messenger ﷺ to mention a word except for some benefit. He, peace be upon him, mentioned freely grazing livestock; had there been no benefit in mentioning it, he would not have done so.’

Abu Muhammed said: This is the questioning of the people of heresy; besides that, it is feeble and grossly misleading. We acknowledge that Allah Most High has mentioned no word except for some benefit, and likewise His Messenger ﷺ. But we disagree with them about the nature of that bene-

واحتجوا فقالوا قد أعطي رسول الله صلى الله عليه وسلم جوامع الكلم فمحال أن يذكر الله عز وجل أو رسوله صلى الله عليه وسلم لفظة إلا لفائدة وقد ذكر عليه السلام السائمة، فلو لم يكن لها فائدة لما ذكرها. قال أبو محمد: وهذا سؤال أهل الإلحاد، وهو مع ذلك غث وتمويه شديد، ونحن مقرون أن الله تعالى لم يذكر لفظه إلا لفائدة وكذلك رسوله صلى الله عليه وسلم ولكنا نخالفهم في ماهية تلك الفائدة فنحن نقول: إن الفائدة في كل لفظة هي الانقياد لمعناها والحكم بموجبها، والأجر الجزيل في الإقرار بأنها من عند الله عز وجل، وألا نسأل لأي شيء قبل هذا؟ وألا نقول لم لم يقل تعالى كذا؟ وألا نتعدى حدود ما أمرنا الله به فنضيف إلى ما ذكر ما لم يذكره، أو نحكم فيما لم يسم من أجل ما سمي بخلاف أو وفاق، وألا تخرج مما أمرنا به شيئا بآرائنا بل نقول: إن هذه كلها أقوال فاسدة واعتراضات كل جاهل زائغ عظيم الجرأة، فلا فائدة أعظم مما أدى إلى الجنة وأنقذ من النار. وأما هم فهم أعرف بالفوائد التي يبطلونها من غير ما ذكرنا. وقالوا: قد كان يغني ذكر الغنم جملة عن ذكر السائمة. قال أبو محمد: فيقال لهم: هذا تعليم منكم لربكم عز وجل كيف ينزل وحيه ولنبيه صلى الله عليه وسلم كيف يبلغ عن ربه تعالى فمن أضل ممن ينزل نفسه في هذه المنزلة ويقال لهم: ما الفرق على مذهبكم الفاسد بين ذكره تعالى في الاستغفار سبعين مرة، ومراده تعالى بلا خوف منا ومنكم أن ما فوق السبعين بمنزلة السبعين بما بين في الآية الأخرى وبين ذكره صلى الله عليه وسلم السائمة ومراده أيضا مع السائمة غير السائمة بما بين في حديث آخر؟ وهلا اكتفى بذكر النهي عن الاستغفار جملة عن السبعين مرة؟. ويقال لهم في سؤالهم: فما معنى ذكر السائمة، وقد كان يغني ذكر الغنم جملة؟: ما معنى ذكره تعالى جبريل وميكائيل بعد ذكره الملائكة في قوله تعالى: {من كان عدوا لله وملائكته

[16] **Translator’s note (L2793):** “The declaration of a wife as forbidden like one’s mother” renders the legal term ẓihār; the references to freeing a slave concern its expiation. The wording around “when he said” and “exalted be His remembrance” is syntactically compressed. The translation understands al-Shafi‘i as making the inference from Allah’s stipulation of a believing slave.

[17] **Translator’s note (L2794):** The term qurū’ can denote menstrual periods or intervals of purity between menstruations; “menstrual periods” is used here. The source appends the quotation concerning divorced women directly after the marriage verse without an explanatory transition; this sequence is retained.

[18] **Translator’s note (L2796):** The opening fragment continues the preceding statement that the Messenger annulled marriages involving wives in excess of four. The Qur’anic quotations repeatedly omit written alifs in such forms as the divine name and the definite article. These transcriptional spellings have been read according to their evident grammatical sense. Qurū’ is rendered ‘menstrual periods’; the Arabic term also admits the interpretation ‘periods of purity between menstruations,’ a distinction relevant to the legal duration. In the breastfeeding quotation, ‘what you have given’ follows the supplied آتيتم; it has not been replaced with an explanatory rendering such as ‘the agreed payment.’

[19] **Translator’s note (L2797):** The final words begin a salutation that continues in the next unit; only the supplied fragment is translated here. The phrase ‘This must be understood’ supplies the English syntax of the Arabic verbal noun ‘understanding/taking,’ whose construction continues from the preceding unit.

[20] **Translator’s note (L2798):** ‘Contrary implication’ renders dalīl al-khiṭāb: inferring a contrary ruling for an unmentioned case from a qualification attached to the case expressly mentioned. The opening completes the salutation begun in the preceding unit.

[21] **Qur’an references (L2793):** Qur’an 2:221 (Al-Baqarah); Qur’an 2:228 (Al-Baqarah); Qur’an 2:234 (Al-Baqarah); Qur’an 2:233 (Al-Baqarah); Qur’an 4:23 (An-Nisa).

fit. We maintain that the benefit in every word consists in submitting to its meaning, ruling according to what it entails, and receiving abundant reward for acknowledging that it comes from Allah, Mighty and Majestic; in our not asking for what purpose this was accepted, and not saying, 'Why did He Most High not say such-and-such?'; in our not overstepping the limits of what Allah has commanded us, thereby adding to what He mentioned something He did not mention, or ruling on something unnamed, on account of something named, either contrary to it or in agreement with it; and in our not excluding anything from what we have been commanded by means of our own opinions. Rather, we say that all these are unsound statements and the objections of every ignorant, deviant person of immense audacity. No benefit is greater than that which leads to Paradise and delivers from the Fire. As for them, they know best the benefits, other than those we have mentioned, which they invalidate.

They said: 'Mentioning sheep and goats collectively would have sufficed without mentioning freely grazing ones.'

Abu Muhammed said: They should therefore be told: 'This is your teaching your Lord, Mighty and Majestic, how to send down His revelation, and teaching His Prophet ﷺ how to convey from his Lord Most High. Who is more astray than someone who places himself in this position?'

They should be told: 'On your unsound doctrine, what difference is there between His mentioning, Most High, seventy times in connection with asking forgiveness—when His intention, Most High, without fear on our part or yours, is that more than seventy is equivalent to seventy, as He explained in the other verse—and his mentioning ﷺ freely grazing livestock, when his intention also includes livestock that do not graze freely along with those that do, as he explained in another report? Why did He not content Himself with mentioning the prohibition of asking forgiveness collectively, without mentioning seventy times?'

They should be told, in response to their question, 'What is the point of mentioning freely grazing livestock, when mentioning sheep and goats collectively would have sufficed?': 'What is the point of His mentioning, Most

ورسله وجبريل وميكال فإن الله عدو للكافرين} وقد كان يغني ذكر الملائكة جملة؟ وما معنى قوله تعالى: {إن إبراهيم لحليم أواه منيب} أترى إسماعيل لم يكن حليما أواها وما معنى قوله تعالى في إسماعيل {وذكر في لكتاب إسماعيل إنه كان صادق لوعد وكان رسولا نبيا} أترى إبراهيم وموسى وعيسى لم يكن وعدهم صادقا

High, Gabriel and Michael after mentioning the angels, in His words, Most High: {Whoever is an enemy to Allah, His angels, His messengers, Gabriel and Michael—then Allah is an enemy to the unbelievers}, when mentioning the angels would have sufficed collectively? And what is the meaning of His words, Most High: {Indeed, Abraham was forbearing, much given to sighing in supplication, ever turning back to Allah}? Do you suppose that Ishmael was not forbearing and much given to sighing in supplication? And what is the meaning of His words, Most High, concerning Ishmael: {And mention Ishmael in the Book. He was true to his promise, and he was a messenger and a prophet}? Do you suppose that Abraham, Moses and Jesus were not true to their promises?'[222324]

L2802–2803 They should be told: 'We have found that Allah Most High introduces in the Qur'an, whose composition is inimitable, an account consisting of a narrative, a legal prescription or an admonition, mentioning some part of the whole of each in one place. Then He Most High mentions that very narrative, that very legal prescription and that very admonition in another place more fully than He mentioned it elsewhere. No one objects to this except someone who assails his Creator, Mighty and Majestic, for what we have mentioned occurs in more than a hundred places in the Qur'an: in the account of Moses, Noah, Abraham and Adam; in the description of Paradise and the Fire; in the command concerning prayer, pilgrimage, almsgiving and jihad; and in other matters. When he ﷺ spoke, he would repeat his words three times.

ويقال لهم قد وجدنا الله تعالى يأتي في القرآن، وهو المعجز نظمه، بذكر قصة من خبر أو شريعة أو موعظة، فيذكر من كل ذلك بعض جملته في مكان، ثم يذكر تعالى ذلك الخبر بعينه، وتلك الشريعة بعينها، وتلك الموعظة بعينها في مكان آخر بأتم مما ذكرها به في غير ذلك الموضع، ولا يعترض في هذا إلا طاعن على خالقه عز وجل، لأن الذي ذكرنا موجود في أكثر من مائة موضع في القرآن، في قصة موسى ونوح وإبراهيم وآدم، وصفة الجنة والنار، وأمر الصلاة والحج والصدقة والجهاد وغير ذلك وقد كان صلى الله عليه وسلم يكرر الكلام إذا تكلم به ثلاثا ولا فرق بين تكرار جميعه وبين تكرار بعضه فكرر صلى الله عليه وسلم ذكر الغنم السائمة في مكان وذكر في مكان آخر الغنم جملة كما كرر قوله تعالى {ليس على لذين آمنوا وعملوا لصالحات جناح فيما طعموا إذا ما تقوا وآمنوا وعملوا الصالحات ثم اتقوا وآمنوا ثم اتقوا وأحسنوا والله يحب لمحسنين} وكما كرر تعالى ذكر موسى عليه السلام في القرآن في مائة وثلاثين موضعا، وإبراهيم عليه السلام في أربع وستين موضعا، ولم يذكر إدريس واليسع وإلياس وذا الكفل إلا في موضعين من القرآن فقط، وكما كرر تعالى: {فبأي آلاء ربكما تكذبان} أكثر من آية في سورة واحدة إحدى وثلاثين مرة فهل لأحد أن يعترض فيقول هلا بلغها أكثر؟ أو هلا

[22] **Translator's note (L2799):** The supplied قبل in 'لأي شيء قبل هذا' is unvocalized and awkward in context. The translation reads it as qubila, 'was accepted.' A reading قيل, 'was said,' would fit the surrounding argument, but has not been silently substituted. The supplied 'وألا تخرج' shifts grammatical form; the translation follows the surrounding first-person plural construction while preserving its stated sense. Sā'ima means livestock that graze freely, a technical qualification in the discussion of obligatory alms. Ghanam includes both sheep and goats.

[23] **Translator's note (L2800):** The supplied 'بلا خوف منا ومنكم' literally says 'without fear on our part or yours.' 'Without disagreement between us and you' would fit the argument, but would require خلاف in place of the supplied خوف; the wording has not been silently corrected.

[24] **Qur'an references (L2799):** Qur'an 2:98 (Al-Baqarah); Qur'an 11:75 (Hud).

There is no difference between repeating all of something and repeating part of it. Thus he ﷺ repeated the mention of freely grazing sheep and goats in one place, and in another place mentioned sheep and goats collectively, just as He Most High repeated in His words: {There is no blame upon those who believe and do righteous deeds for what they have consumed, provided they are mindful of Allah, believe and do righteous deeds, then are mindful of Allah and believe, then are mindful of Allah and do good. Allah loves those who do good.} And just as He Most High repeated the mention of Moses, peace be upon him, in the Qur'an in a hundred and thirty places, and Abraham, peace be upon him, in sixty-four places, while He mentioned Idris, Elisha, Elijah and Dhu al-Kifl in only two places in the Qur'an; and just as He Most High repeated {Which, then, of your Lord's favors do you two deny?} in more than one verse in a single surah, thirty-one times. Does anyone have the right to object and say, "Why did He not make them more numerous?" or "Why did He not restrict Himself to a smaller number of them?" or "Would once not have sufficed?"—as these mistaken people said, "Why did he not content himself with mentioning sheep and goats without mentioning freely grazing ones?" We have already explained that Allah Most High derives no benefit from anything He created, nor from His leaving undone what He left undone, and that the benefit for us in this is the immense reward for

اقتصر على عدد منها أقل؟ أو ما كان يكفي مرة واحدة؟ كما قال هؤلاء المخطئون: هلا اكتفى بذكر الغنم عن ذكر السائمة؟ وقد بينا أنه لا فائدة لله تعالى في شيء مما خلق ولا في تركه ما ترك، وأن الفائدة لنا في ذلك الأجر العظيم في الإيمان بكل ذلك كما قاله تعالى: {وإذا مآ أنزلت سورة فمنهم من يقول أيكم زادته هذه إيمانا

believing in all of it, as He Most High said: {Whenever a surah is sent down, some of them say, “Which of you has this increased in faith?[25][26]

L2804–2808 “As for those who believe, it has increased them in faith, and they rejoice.” And He, exalted is He, reported that the unbelievers said: “We have appointed none but angels as the keepers of the Fire, and We have made their number only a trial for those who disbelieve, so that those given the Book may attain certainty, and those who believe may increase in faith, and those given the Book and the believers may not doubt, and so that those in whose hearts is sickness and the unbelievers may say, ‘What did Allah intend by this as a parable?’ Thus Allah leads astray whom He wills and guides whom He wills. None knows the hosts of your Lord but He, and it is only a reminder to humankind.” We therefore increase in faith through what we have cited, and we do not ask, “What did Allah intend by this as a parable?” Let them choose for themselves whichever of the two paths they prefer, as Ali ibn Abbas said: “Before you—consider which of your two courses you will follow— Are two divergent paths: one straight and one crooked.” The benefit of repeating the mention of grazing livestock, and confining the mention to them in certain places, may also be an additional benefit beyond what we have mentioned. This is that we know that some obligations are more emphatic than others.

[25] **Translator’s note (L2803):** The awkward ‘أكثر من آية’ is rendered ‘in more than one verse,’ retaining the supplied wording alongside the explicit count of thirty-one repetitions. The final quotation continues in the following unit; no closing quotation or completion of the verse has been supplied.

[26] **Qur’an references (L2802):** Qur’an 5:93 (Al-Ma’idah); Qur’an 55:13 (Ar-Rahman); Qur’an 55:16 (Ar-Rahman); Qur’an 55:18 (Ar-Rahman); Qur’an 55:21 (Ar-Rahman); Qur’an 55:23 (Ar-Rahman); Qur’an 55:25 (Ar-Rahman); Qur’an 55:28 (Ar-Rahman); Qur’an 55:30 (Ar-Rahman); Qur’an 55:32 (Ar-Rahman); Qur’an 55:34 (Ar-Rahman); Qur’an 55:36 (Ar-Rahman); Qur’an 55:38 (Ar-Rahman); Qur’an 55:40 (Ar-Rahman); Qur’an 55:42 (Ar-Rahman); Qur’an 55:45 (Ar-Rahman); Qur’an 55:47 (Ar-Rahman); Qur’an 55:49 (Ar-Rahman); Qur’an 55:51 (Ar-Rahman); Qur’an 55:53 (Ar-Rahman); Qur’an 55:55 (Ar-Rahman); Qur’an 55:57 (Ar-Rahman); Qur’an 55:59 (Ar-Rahman); Qur’an 55:61 (Ar-Rahman); Qur’an 55:63 (Ar-Rahman); Qur’an 55:65 (Ar-Rahman); Qur’an 55:67 (Ar-Rahman); Qur’an 55:69 (Ar-Rahman); Qur’an 55:71 (Ar-Rahman); Qur’an 55:73 (Ar-Rahman); Qur’an 55:75 (Ar-Rahman); Qur’an 55:77 (Ar-Rahman); Qur’an 9:124 (At-Tawbah).

فأما لذين آمنوا فزادتهم إيمانا وهم يستبشرون} وأخبر تعالى أن الكفار قالوا {وما جعلنآ أصحاب لنار إلا ملائكة وما جعلنا عدتهم إلا فتنة للذين كفروا ليستيقن لذين أوتوا لكتاب ويزداد لذين آمنوا إيمانا ولا يرتاب لذين أوتوا لكتاب ولمؤمنون وليقول لذين في قلوبهم مرض ولكافرون ماذآ أراد لله بهذا مثلا كذلك يضل لله من يشآء ويهدي من يشآء وما يعلم جنود ربك إلا هو وما هي إلا ذكرى للبشر} فنحن نزداد إيمانا بما أوردنا ولا نسأل ماذا أراد الله بهذا مثلا، فليختاروا لأنفسهم أي السبيلين أحبوا، كما قال علي بن عباس: أمامك فانظر أي نهجيك تنهج طريقان شتى: مستقيم وأعوج وقد يمكن أن تكون الفائدة في تكرار السائمة والاقتصار عليها في بعض المواضع فائدة زائدة على ما ذكرنا، وهي أننا قد علمنا أن بعض الفرائض أوكد من بعض، مثل الصلاة فإنها أوكد من الصيام. وليس ذلك بمخرج صيام رمضان على أن يكون فرضا، ومثل القتل والشرك فإنهما أوكد في التحريم من لطمة المرء المسلم ظلما، وليس ذلك بمخرج للطمة ظلما من أن تكون حراما، وإنما المعنى فيما ذكرنا من التأكيد أن هذا أعظم أجرا، وهذا أعظم وزرا، وما استواء كل ذلك في الوجوب وفي التحريم فسواء، لا تفاضل في شيء من ذلك. وكل ذلك سواء إن هذا حرام وهذا حرام، وإن هذا واجب وهذا واجب، فيكون على هذا أجر المزكي غير للسائمة أعظم من أجر المزكي غير السائمة، وكل مؤد فرضا ومأجور على ما أدى ويكون إثم مانع زكاة السائمة أعظم من إثم مانع زكاة غير السائمة، وكلاهما مانع فرض، ومحتقب إثم، فلتخصيص السائمة بالذكر في بعض المواضع على هذا فائدة عظيمة، كما أن الزاني بامرأة جاره أو امرأة المجاهد والحريمة أعظم إثما من الزاني بامرأة أجنبية، أو امرأة أجنبي ذمي أو حربي، وكل زان وآت كبيرة وآثم إلا أن الإثم يتفاضل. ومثل هذا قوله تعالى {وقضى ربك ألا تعبدوا

Prayer, for example, is more emphatic than fasting; yet this does not remove fasting Ramadan from being an obligation. Likewise, killing and associating partners with Allah are more emphatically prohibited than unjustly slapping a Muslim; yet this does not remove an unjust slap from being unlawful. What we mean by the greater emphasis we have mentioned is only that this carries a greater reward and that carries a greater burden of sin. As for all these being equal in obligatoriness and prohibition, they are equal: there is no difference of degree in any of that. All are equal in that this is unlawful and that is unlawful, and this is obligatory and that is obligatory. On this basis, the reward of the person paying zakat on livestock other than grazing livestock would be greater than the reward of the person paying zakat on livestock other than grazing livestock. Each discharges an obligation and is rewarded for what he has discharged. The sin of withholding the zakat on grazing livestock would be greater than the sin of withholding the zakat on livestock other than grazing livestock. Each withholds something obligatory and incurs a burden of sin. Thus, on this basis, singling out grazing livestock for mention in certain places has a great benefit. Similarly, someone who commits fornication with his neighbor's wife, or the wife of a warrior engaged in jihad, or a woman within the prohibited degrees of kinship, incurs greater sin than someone who commits fornication with an unrelated woman, or the wife of an unrelated man who is a protected non-Muslim or a non-Muslim at war with the Muslims. Each is a fornicator, a perpetrator of a major sin, and a sinner; nevertheless, sin admits of degrees. Similar to this is 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 to them 'Uff,' and do not rebuke them, but speak to them graciously." And His saying, exalted is He: "As for the orphan, do not oppress him; and as for the petitioner, do not rebuke him." Does this permit oppressing someone other than an orphan and rebuking someone other than a poor person, or prohibit showing kindness to relatives, neighbors, and all other Muslims apart from parents? Rather, because oppressing an orphan, rebuking a poor person, and failing to show kindness to parents involve a greater burden of sin and a greater reward, they were singled out for mention in certain places and included with all other people

إلا إياه وبالوالدين إحسانا إما يبلغن عندك لكبر أحدهما أو كلاهما فلا تقل لهمآ أف ولا تنهرهما وقل لهما قولا كريما} وكقوله تعالى {فأما ليتيم فلا تقهر * وأما لسآئل فلا تنهر} فهل في هذا إباحة قهر غير اليتيم ونهر غير المسكين، أو المنع من الإحسان إلى غير الآباء من ذوي القربى والجيران وسائر المسلمين؟ ولكنه لما كان قهر اليتيم ونهر المسكين وترك الإحسان إلى الوالدين أعظم وزرا وأعظم أجرا، خصوا بالذكر في بعض المواضع، وعموا مع سائر الناس في مواضع أخر، فلعل السائمة مع غير السائمة كذلك، وكذلك ذكره تعالى الصلوات إذ يقول عز من قائل {حافظوا على لصلوات ولصلاة لوسطى وقوموا لله قانتين} فيسأل هؤلاء المقدمون كما سألوا فيقال لهم المعنى في تخصيص النبي صلى الله عليه وسلم السائمة بالذكر في بعض الأحاديث كالمعنى في تخصيصه تعالى الصلاة الوسطى بالمحافظة دون الصلوات في لفظ مفرد، وقد عمهما تعالى في سائر الصلوات كما عم رسوله صلى الله عليه وسلم السائمة مع غير السائمة في حديث ابن عمر فبطل بما ذكرنا اعتراضهم بطلب الفائدة في تكرار السائمة، وبأن ذكر الغنم جملة كان يكفي، ولاح أن سؤالهم سؤال إلحاد وشر. وبالله تعالى التوفيق. وقد يكفي من هذا قوله تعالى: {لا يسأل عما يفعل وهم يسألون} وما روي عن رسول الله صلى الله عليه وسلم هلك المتنطعون ولا تنطع أعظم من قول قائل: لم قال الله تعالى أمرا كذا ولم يقل أمرا كذا؟ وبالله تعالى نستعين

in other places. Perhaps grazing livestock, together with livestock other than grazing livestock, are likewise. So too is His mention of the prayers, when He—mighty is He who speaks—says: "Observe the prayers, and the middle prayer, and stand before Allah in devout obedience." These presumptuous people should therefore be questioned as they themselves have questioned. They should be told: the significance of the Prophet's ﷺ singling out grazing livestock for mention in some hadiths is like the significance of His, exalted is He, singling out the middle prayer for observance, apart from the other prayers, in a separate expression. He, exalted is He, has included both within all the prayers, just as His Messenger ﷺ included grazing livestock together with livestock other than grazing livestock in the hadith of Ibn Umar. What we have mentioned therefore invalidates their objection demanding a benefit in repeating the mention of grazing livestock and asserting that mentioning sheep collectively would have sufficed. It has become apparent that their question is a question of impiety and evil. Success comes through Allah, exalted is He. His saying, exalted is He, may suffice concerning this: "He is not questioned about what He does, whereas they are questioned." So too may what is transmitted from the Messenger of Allah ﷺ: "Those who go to excess in questioning have perished." There is no greater excess in questioning than someone saying, "Why did Allah, exalted is He, say such-and-such a thing and not say such-and-such a thing?" And we seek help from Allah, exalted is He.[27][28][29]

[27] **Translator's note (L2805):** The wording وما استواء is syntactically awkward; the translation follows the contrast established by the surrounding argument between degrees of reward or sin and equality in legal status.

[28] **Translator's note (L2806):** The opening comparison repeats 'livestock other than grazing livestock' on both sides. The first occurrence, غير للسائمة, is also malformed. The translation preserves the repeated comparison rather than substituting the apparently intended 'grazing livestock' in its first half. الحريمة is rendered as a woman within the prohibited degrees of kinship; its precise scope here is uncertain. The source attributes both 'a greater burden of sin' and 'a greater reward' to the listed wrongful acts. The apparent intended distinction between committing those acts and avoiding them is not expressed in the Arabic and has not been inserted. The dual pronoun in عمهما, 'included both,' has an unclear antecedent in the discussion of the prayers.

[29] **Qur'an references (L2804):** Qur'an 74:31 (Al-Muddaththir); Qur'an 2:26 (Al-Baqarah); Qur'an 17:23 (Al-Isra); Qur'an 21:23 (Al-Anbya).

وقالوا إن قول رسول الله صلى الله عليه وسلم إنما الولاء لمن أعتق دليل على أن ولاء لمن لم يعتق. قال أبو محمد: وليس كما ظنوا، ولكن لما كان الأصل أن لا ولاء لأحد على أحد بقوله تعالى: {يابني آدم قد أنزلنا عليكم لباسا يواري سوءاتكم وريشا ولباس لتقوى ذلك خير ذلك من آيات لله لعلهم يذكرون} وبقوله تعالى {بل عجبوا أن جآءهم منذر منهم فقال لكافرون هذا شيء عجيب} وبقوله صلى الله عليه وسلم كل المسلم على المسلم حرام ثم جاء الحديث المذكور وجب به الولاء لمن أعتق، وبقي من لم يعتق على ما كان عليه مذ خلق من أن لا ولاء لأحد عليه إلا من أوجب عليه الإجماع المنقول المتيقن إلى حكم النبي صلى الله عليه وسلم ولولا مثل من تناسل من المعتق من أصلاب أبنائه الذكور من كل من يرجع إليه نسبه، ممن حمل به بعد الولاء المنعقد على الذي ينتسب إليه كأسامة بن زيد وغيره ولولا قوله صلى الله عليه وسلم إنما الولاء لمن أعتق ما وجب المعتق ولاء على المعتق، لأن ذلك إيجاب شريعة وشرط، والشرائع لا تكون إلا بإذن من الله تعالى على لسان رسوله صلى الله عليه وسلم وكل شرط ليس في كتاب الله تعالى فهو باطل ووجدنا هذا الحديث الذي احتجوا به لم يمنع من وجوب الولاء لغير من أعتق، مثل ما ذكرنا من وجوب ولاء ولد المعتق، ولم يعتقه أحد، ولا ولدته أمه، ولا حمل به إلا وهو حر، لولد معتق أبيه وهو لم يعتقه قط، ولا ملكه قط، ولا أعتق أباه ولا جده ولا ملكهما قط، ولا أعتقه أبو هذا الذي ولاؤه الآن، ولا جده ولا ملكاه قط، فبطل ما ادعوه من القول بدليل الخطاب. ومن أعجب الأشياء: أن هؤلاء المحتجين بهذا الحديث في تصحيح الحكم بدليل الخطاب هم أشد الناس نقضا لأصولهم في ذلك، وهدما لما احتجوا به لأنهم قد حكموا بالولاء لغير المعتق على من لم يعتق قط بلا دليل، لا من نص ولا من إجماع لكن تحكما فاسدا، فأوجبت طوائف منهم أن الولاء يجزىء العم والجد إذا أعتقا. وأوجبوه ينتقل كانتقال الكرة

L2809–2811 They said that the saying of the Messenger of Allah ﷺ, "Patronage belongs only to the one who emancipates," is evidence that patronage belongs to someone who has not emancipated. Abu Muhammed said: It is not as they supposed. Rather, since the original state is that no one has patronage over anyone else, by His saying, exalted is He, "Children of Adam, We have sent down to you clothing to cover your shameful parts, and finery; but the clothing of piety—that is better. That is among the signs of Allah, so that they may take heed"; and by His saying, exalted is He, "Rather, they marveled that a warner from among themselves had come to them, and the unbelievers said, 'This is an astonishing thing'"; and by his saying ﷺ, "The whole of a Muslim is inviolable to another Muslim"; then, when the aforementioned hadith came, patronage became due through it to the person who emancipated. Someone who had not emancipated remained in the state in which he had been since he was created: no one had patronage over him, except someone upon whom transmitted consensus, traced with certainty to the judgment of the Prophet ﷺ, established it. And were it not for such people as those descended from an emancipated person through the loins of his male children—all those whose lineage goes back to him and who were conceived after patronage had been established over the person to whom they trace their descent, such as Usamah ibn Zayd and others—and were it not for his saying ﷺ, "Patronage belongs only to the one who emancipates," no patronage over an emancipated person would be due to his emancipator. For that constitutes the imposition of a religious law and a stipulation, and religious laws can exist only by permission from Allah, exalted is He, through the speech of His Messenger ﷺ. Every stipulation that is not in the Book of Allah, exalted is He, is void. We have found that this hadith which they adduced as evidence did not prevent patronage from becoming due to someone other than the person who emancipated. An example is what we have mentioned: patronage over the child of an emancipated person becomes due to the child of his father's emancipator, although no one emancipated him, and his mother neither bore him nor conceived him except as a free person. That person never emancipated him or owned him, never emancipated his father or grandfather or owned either of them; nor did the father or grandfather of the person to whom his patronage now belongs ever emancipate

him or own him. Thus their claim to argue from contrary implication is invalidated. Among the most astonishing things is that these people who adduce this hadith to establish the validity of ruling by contrary implication are the most vigorous of all people in contradicting their own principles on this matter and demolishing what they have adduced as evidence. For they have awarded patronage to someone other than the emancipator over someone who was never emancipated, without any evidence from either a text or consensus, but merely through an unsound arbitrary ruling. Some groups among them have therefore ruled that patronage suffices for the paternal uncle and grandfather when they are emancipated, and have ruled that it passes from one person to another like a ball passing about in play. Yet the Messenger of Allah ﷺ has shown them to be false by saying, "Patronage is a bond like the bond of lineage." Lineage does not transfer; it therefore follows necessarily that patronage, like lineage, does not transfer. They say, concerning a male slave who marries an emancipated woman and she bears him children, that patronage over her children belongs to her masters. They

في اللعب بها وقد أكذبهم رسول الله صلى الله عليه وسلم بقوله الولاء لحمة كلحمة النسب والنسب لا ينتقل، فوجب ضرورة أن الولاء كالنسب لا ينتقل. وهم يقولون في العبد ينكح معتقة فتلد له: إن ولاء ولدها لسادتها. قالوا: أعتق أبوهم يوما ما عاد ولاء والدها إلى معتق أبيهم.

said: “Should their father be emancipated one day, patronage over her father returns to their father’s emancipator.”[30][31][32][33]

L2812–2817 Abu Muhammed said: Could anything be more astonishing than this? A man belongs to Banu Tamim because his mother is their client—and the Messenger of Allah ﷺ says, in the statement they have construed improperly, “A people’s client belongs to them”—when suddenly he becomes directly affiliated with al-Azd because a man of al-Azd emancipates his father! Could there be any greater opposition to the Messenger of Allah ﷺ, who conveys the message of his Lord Most High? Or could they more thoroughly give themselves the lie than by saying that his statement ﷺ, “The bond of clientage belongs only to the one who emancipates,” proves that there is no bond of clientage for someone who has not emancipated anyone? Yet this person, whose clientage they have transferred once from the Yemenite tribes to the Mudarite tribes, and another time from the Persians to Quraysh, has never been emancipated by anyone, has never been owned, and was free from the moment his mother conceived him. They have assigned the bond of clientage

قال أبو محمد: أفيكون أعجب من هذا بينما المرء من بني تميم لكون أمه مولاة منهم ويقول رسول الله صلى الله عليه وسلم الذي حملوه على غير وجهه مولى القوم منهم. إذ صار بلا واسطة من الأزد بعتق رجل من الأزد لأبيه أفيكون في خلاف رسول الله صلى الله عليه وسلم المبلغ عن ربه تعالى أكثر من هذا أو يكون في إكذابهم أنفسهم أن قالوا قوله صلى الله عليه وسلم إنما الولاء لمن أعتق دليل على أن لا ولاء لمن لم يعتق؟ وهذا الذي حروا ولاءه مرة من اليمانية إلى المضرية، ومرة من الفرس إلى قريش، لم يعتقه أحد ولا ملك قط، ولا حملته أمه إلا وهو حر. وأوجبوا الولاء لموالي الأم على ولدها من حربي، وعلى ولد الملاعنة بلا نص ولا إجماع، فأين احتجاجهم بدليل الخطاب؟ ولكن غرض القوم إقامة الشغب في المسألة التي هم فيها فقط، ولا يبالون أن ينقضوا على أنفسهم ألف مسألة بما يريدون به تأييد هذه، حتى إذا صاروا إلى غيرها لم يبالوا بإبطال ما صححوا به هذه التي انقضى الكلام فيها في نصرهم للتي صاروا إليها، فهم دأبا ينقضون ما أبرموا، ويصححون ما أبطلوا، ويبطلون ما صححوا، فصح أن أقوالهم من عند غير الله عز وجل، لكثرة ما فيها من الاختلاف والتفاسد، وإنما هم قوم توغلوا فانتسبوا في التقليد لأقوال فاسدة يهدم بعضها بعضا، فألفوها ألفة كل ذي دين لدين أبيه، ودين من نشأ معه، فلا يبالون بما قالوا في إرادتهم نصر ما لم ينصره الله تعالى من تلك المذاهب الفاسدة وقالوا قوله صلى الله عليه وسلم إنما الأعمال بالنيات دليل على أن لا عمل إلا بنية وأن: ما عمل بغير نية باطل. قال أبو محمد: ليس ذلك كما ظنوا، ولكن لما قال الله تعالى: {وأن ليس للإنسان إلا ما سعى} وقال تعالى {ومآ أمروا إلا ليعبدوا الله مخلصين له لدين حنفآء ويقيموا لصلاة ويؤتوا لزكاة وذلك دين لقيمة} كان قد بطل كل أمر إلا تأدية ما أمرنا به من العبادة

[30] **Translator’s note (L2809):** The opening Arabic says that patronage belongs to someone who has not emancipated; it lacks the negative required by the position attributed to the opponents in the surrounding discussion. The supplied wording is preserved. The two Quranic passages are translated as supplied. Their connection to the claimed original absence of patronage is not explained in this passage. ولولا مثل, translated ‘And were it not for such people as,’ produces a disrupted construction. The surrounding argument appears to require an exception or an illustration concerning descendants, but the wording has not been repaired. ما وجب المعتق ولاء على المعتق appears to lack the preposition before the first المعتق. The translation follows the roles established by the surrounding discussion: patronage due to the emancipator over the emancipated person. دليل الخطاب is rendered consistently as ‘contrary implication’: inferring an opposite ruling for what the wording does not expressly mention.

[31] **Translator’s note (L2810):** يجزىء, rendered ‘suffices,’ is anomalous in this legal context. A reading referring to the transfer or drawing of patronage may have been intended, but the supplied wording has been retained.

[32] **Translator’s note (L2811):** The final sentence reads والدها, ‘her father,’ although the context concerns ولدها, ‘her children.’ The supplied reading is preserved. The conditional sense of ‘should their father be emancipated’ is inferred from the sequence, since no explicit conditional particle appears.

[33] **Qur’an references (L2809):** Qur’an 7:26 (Al-A’raf); Qur’an 50:2 (Qaf).

over a woman's child by a man from a people at war with the Muslims, and over the child of a woman subjected to mutual imprecation, to the mother's patrons, without either a revealed text or consensus. Where, then, is their appeal to the contrary implication of the wording? These people's purpose, however, is merely to stir up contentious argument over the question immediately before them. They do not care if, through what they seek to use to support it, they undermine a thousand of their own positions. Then, when they move on to another question, they do not care if, in support of the one to which they have turned, they invalidate what they used to establish the question whose discussion has now ended. Thus they continually undo what they have settled, affirm what they have invalidated, and invalidate what they have affirmed. It is therefore established that their statements come from someone other than Allah, Mighty and Majestic, because of the abundant disagreement and mutual inconsistency within them. They are merely people who have immersed themselves and committed themselves, through uncritical adherence, to unsound positions that demolish one another. They have grown attached to them as every adherent of a religion grows attached to his father's religion and the religion of those among whom he grew up. They therefore do not care what they say in their desire to support those unsound doctrines which Allah Most High has not supported. They also said that his statement ﷺ, "Actions are only according to intentions," proves that there is no action except with an intention, and that whatever is done without an intention is invalid. Abu Muhammed said: It is not as they supposed. Rather, when Allah Most High said, "And that a human being shall have only what he has striven for," and said, "And they were commanded only to worship Allah, making religion sincerely His, inclining to the true faith, and to establish prayer and give the obligatory alms; and that is the religion of uprightness," every undertaking was thereby invalidated except the performance of the worship we have been commanded to perform, with its purpose directed sincerely to Allah Most High. Thus, by this verse, the sufficiency of an action without an intention was invalidated, except what a revealed text or consensus has established, which is consequently excepted from this general statement. Examples include what is established by consensus transmitted back to the Messenger of Allah ﷺ: that a living person's

بإخلاص القصد بذلك إلى الله تعالى فبهذه الآية بطل أن يجزى عمل بغير نية إلا ما أوجبه نص أو إجماع، فكان مستثنى من هذه الجملة، مثل ما ثبت بالإجماع المنقول إلى رسول الله صلى الله عليه وسلم من جواز لحاق دعاء الحي للميت بالميت ومثل لحاق صيام الولي عن الميت بالميت وصدقته عنه، والحج عنه، وتأدية الديون إلى الله تعالى وللناس عنه، وإن لم يأمر هو بذلك ولا نواه، ولحاق الأجر من كل عامل بمن علمه ذلك العمل أو سنه، ولحاق الوزر من كل عامل بمن علمه ذلك العمل أو سنه. وإنما وجب بالحديث الذي ذكروا أن من عمل شيئا بنية ما فله ما نوى، فإن نوى به الله تعالى وتأدية ما أمر به من كيفية ذلك العمل فله ذلك، وقد أدى ما لزمه، وإن نوى غير ذلك فله أيضا ما نوى، فإن لم ينو شيئا فلا ذكر له في هذا الحديث، لكن حكمه في سائر ما ذكرنا قبل. والعجب ممن احتج بهذا الحديث من أصحاب القياس وهم أترك الناس له فأما الحنفيون فينبغي لهم التقنع عند ذكر هذا الحديث والاحتجاج به، فإنهم يجيزون تأدية صيام الفرض بلا نية أصلا بل بنية الفطر، وتأدية فرض الوضوء بغير نية الوضوء لكن بنية التبرد. وقالوا كلهم وأصحاب الشافعي وأصحاب مالك: إن كثيرا من فرائض الحج التي يبطل الحج بتركها تجزي بغير نية. فأما الحنفيون فقالوا: من أحرم وحج ينوي التطوع أجزأه ذلك عن حج الإسلام. وقال الشافعيون: أعمال الحج كلها، حاشا الإحرام، تجزيه بلا نية أداء الفرض. وقال المالكيون: الوقوف بعرفة يجزي بلا نية، وأن الصيام لآخر يوم من رمضان يجزي بنية كانت قبله بنحو ثلاثين يوما، والصلاة تجزيه بلا نية مقترنة بها. وقال بعضهم: غسل الجمعة يجزي من غسل الجنابة. وقال بعضهم: دخول الحمام بلا نية يجزي من غسل الجنابة. فأبطلوا احتجاجهم بالحديث المذكور، وأكذبوا قولهم في دليل الخطاب؛ وأوجبوا جواز أعمال بلا نية حيث أبطلها الله تعالى ورسوله صلى الله عليه وسلم وأبطلوا صيام الولي عن الولي والحج عن الميت وأداء ديون الله تعالى عنه وقد أوجبها الله تعالى. واحتجوا

supplication for the deceased may benefit the deceased; likewise, that a close relative's fasting on behalf of the deceased may benefit the deceased, as may his giving charity on the deceased's behalf, pilgrimage on his behalf, and the discharge on his behalf of debts owed to Allah Most High and to other people, even if he himself neither directed this nor intended it; and that the reward arising from everyone who performs an action accrues to whoever taught him that action or instituted it, and that the burden of sin arising from everyone who performs an action accrues to whoever taught him that action or instituted it. The hadith they cited establishes only that whoever does something with a particular intention has what he intended. If he intended thereby Allah Most High and the performance of the action in the manner he was commanded to perform it, he has that and has discharged his obligation. If he intended something else, he likewise has what he intended. If he intended nothing, however, he is not mentioned in this hadith; his ruling is instead found in the other evidence we previously mentioned. What is astonishing is that the advocates of analogy appeal to this hadith, although they are the people who most disregard it. As for the Hanafis, they ought to cover their faces when this hadith is mentioned and invoked as evidence. They permit the discharge of obligatory fasting with no intention whatsoever—indeed, with the intention of not fasting—and the discharge of obligatory ablution without the intention of ablution, but with the intention of cooling oneself. All of them, together with the followers of al-Shafi'i and the followers of Malik, say that many of the obligatory acts of pilgrimage, whose omission invalidates the pilgrimage, suffice without an intention. The Hanafis say that whoever enters the consecrated state and performs the pilgrimage intending a voluntary observance thereby discharges the obligatory pilgrimage of Islam. The Shafi'is say that all the acts of pilgrimage except entering the consecrated state suffice without an intention to discharge the obligation. The Malikis say that standing at 'Arafat suffices without an intention, that fasting the last day of Ramadan suffices with an intention formed approximately thirty days previously, and that prayer suffices for him without an intention accompanying it. Some of them say that the Friday ritual bath suffices in place of the ritual bath required by major ritual impurity. Some of them say that entering the bathhouse without an intention suffices

أن لا عمل إلا بنية العامل، ولا نية للمعمول عنه في ذلك فاستدركوا على ربهم ما لم يستدركوه على أنفسهم، وهذا غاية الخذلان. واحتجوا بما روي عن عمر بن الخطاب رضي الله عنه، وعن يعلى بن منبه رحمة الله عليه إذ سأل عن قصر الصلاة وقد ارتفع الخوف، قالوا: فلما جاء القصر في القرآن في حال الخوف دل ذلك على أن الأمر بخلاف الخوف.

in place of the ritual bath required by major ritual impurity. They have thus invalidated their own appeal to the aforementioned hadith, given the lie to their position concerning the contrary implication of the wording, and affirmed the validity of actions without an intention where Allah Most High and His Messenger ﷺ have invalidated them. They have also invalidated a close relative's fasting on behalf of a close relative, pilgrimage on behalf of the deceased, and the discharge on his behalf of debts owed to Allah Most High, although Allah Most High has established them. They argued that there is no action except with the intention of the person performing it, and that the person on whose behalf it is performed has no intention in that matter. They have thus presumed to correct their Lord in a way they have not corrected themselves. This is the utmost abandonment to error. They appealed to what is related from 'Umar ibn al-Khattab—may Allah be pleased with him—and from Ya'la ibn Munabbih—may Allah have mercy upon him—when he asked about shortening the prayer after fear had ceased. They said: Since shortening is mentioned in the Quran in a state of fear, this indicates that the ruling is different when fear is absent.[34][35][36][37]

L2818 Abu Muhammed said: One of the leading men among our own companions, Abu al-Hasan, reporting from 'Abd Allah ibn Ahmad ibn al-Mughallis, erred in this matter and held the view we have mentioned. This provides them with no proof, because the original rule for all prayers, according to the apparent sense of the command, is to perform them in full. The Messenger of Allah

قال أبو محمد: وقد غلط في ذلك من أكابر أصحابنا أبو الحسن، عن عبد الله بن أحمد بن المغلس: فظن مثل ما ذكرنا، وهذا لا حجة لهم فيه، لأن الأصل في الصلوات كلها على ظاهر الأمر الإتمام وقد نص رسول الله صلى الله عليه وسلم على عدد ركعات كل صلاة ثم جاء النص بعد ذلك في القصر في حال السفر مع الخوف، فكان ذلك مستثنى من سائر الأحوال، فلما رأى عمر القصر متماديا مع ارتفاع الخوف، أنكر خروج الحال التي لم تستثن في علمه عن حكم النص الوارد في إتمام الصلاة في سائر الأحوال غير الخوف فأخبر صلى الله عليه وسلم أن حال السفر فقط مستثناة أيضا من إيجاب الإتمام، وإن لم يكن هنالك خوف، فكان هذا نصا زائدا في استثناء حال السفر مع الأمن،

[34] **Translator's note (L2812):** The supplied حروا in the discussion of transferring clientage appears corrupt; the translation follows the contextual sense of transferring or drawing the bond of clientage from one affiliation to another. The phrase فانتسبوا في التقليد is awkward as supplied; it is rendered as committing themselves through uncritical adherence.

[35] **Translator's note (L2813):** The second Quranic quotation, corresponding to 98:5, contains defective spellings and missing initial letters in the supplied transcription, including لدين، لصلاة، لزكاة، لقيمة where the standard wording has الله, and الدين، الصلاة، الزكاة، القيمة where the standard wording has الله. The translation gives the intelligible sense of the supplied quotation.

[36] **Translator's note (L2816):** The supplied text says صيام الولي عن الولي, literally a close relative's fasting on behalf of a close relative. The surrounding discussion concerns fasting on behalf of the deceased, but that wording has not been substituted here.

[37] **Qur'an references (L2812):** Qur'an 53:39 (An-Najm).

ﷺ explicitly specified the number of prayer cycles in each prayer. A revealed text subsequently came concerning shortening during travel accompanied by fear, so that circumstance was excepted from all other circumstances. When ‘Umar saw the continued practice of shortening after fear had ceased, he objected to a circumstance which, to his knowledge, had not been excepted being excluded from the ruling of the text prescribing the full performance of prayer in all circumstances other than fear. He ﷺ then explained that the circumstance of travel alone is also excepted from the obligation to perform the prayer in full, even where there is no fear. This was therefore an additional text excepting the circumstance of travel in safety.[38]

L2819–2820 Thus, the person who objected was someone unaware that revealed law had prescribed this charitable concession, which must be accepted; that person was ‘Umar—may Allah be pleased with him. We do not deny that one Companion, or even most of them, might be unaware of the revelation of a ruling known to others among them. As for the hadith related from ‘A’ishah—may Allah be pleased with her—“Prayer was made obligatory,” it provides no proof against us; rather, it is proof for us. ‘Umar may have supposed, when prayer performed while resident was changed to four prayer cycles, that prayer during travel had also been changed. No one after the Messenger of Allah ﷺ is exempt from error. Abu Muhammed said: Some of our companions who erred in this matter offered as their justification the argument that his statement ﷺ in the hadith of Laqit ibn Sabrah al-Iyadi, “Draw water into the nose twice, thoroughly, unless you are fasting,” prohibits a fasting person from drawing water thoroughly into the nose. Abu Muhammed said: It is not as they supposed. Rather, Laqit’s hadith makes thoroughness obligatory upon someone who is not fasting, as an obligation he must necessarily discharge. It also excepts the fasting person from this obligation. Thus, the fasting person is relieved of the obligation of thoroughness. The lapse of the obligation does not entail any prohibition of it. Thus, the aforementioned hadith contains no prohibition against the fast-

[38]**Translator’s note (L2818):** The wording أبو الحسن عن عبد الله بن أحمد بن المغلس is syntactically awkward. The translation preserves عن as a transmission link, “reporting from,” although the passage may contain a corruption in the scholar’s identification.

فإنما أنكر ذلك من جهل أن هذه الصدقة الواجب قبولها قد نزل بها الشرع، وهو عمر رضي الله عنه، ولسنا ننكر مغيب الواحد من الصحابة أو الأكثر منهم عن نزول حكم قد علمه غيره منهم. وأما الحديث المروي عن عائشة رضي الله عنها فرضت الصلاة فلا حجة فيه علينا، بل هو حجة لنا، وقد يظن عمر إذا نقلت صلاة الحضر إلى أربع ركعات أن صلاة السفر أيضا منقولة والغلط غير مرفوع عن أحد بعد رسول الله صلى الله عليه وسلم قال أبو محمد وتعلل بعض من غلط في هذا الباب من أصحابنا بأن قالوا قوله صلى الله عليه وسلم استنشق اثنتين بالغتين إلا أن تكون صائما في حديث لقيط بن صبرة الأيادي، في ذلك مانع من مبالغة الصائم في الاستنشاق. قال أبو محمد: وليس ذلك كما ظنوا، ولكن حديث لقيط فيه إيجاب المبالغة على غير الصائم فرضا لا بد له من ذلك، وفيه استثناء الصائم من إيجاب ذلك عليه، فسقط عن الصائم فرض المبالغة وليس في سقوط الفرض ما وجب المنع منها، فليس في الحديث المذكور منع الصائم منها، لكنه له مباحة لا واجبة ولا محظورة لأن الإباحة واسطة بين الحظر والإيجاب. فإذا سقط الإيجاب لم ينتقل إلى الحظر إلا بنهي وارد، لكن ينتقل إلى أقرب المراتب إليه وهي الإباحة أو الندب، وإذا سقط التحريم ولم ينتقل إلى الوجوب إلا بأمر وارد، لكنه ينتقل إلى أقرب المراتب إليه وهي الإباحة أو الكراهة وقد بينا هذا في باب النسخ من هذا الكتاب.

ing person doing so; rather, it is permissible for him, neither obligatory nor prohibited. This is because permissibility stands between prohibition and obligation. When obligation lapses, the ruling does not move to prohibition without an express prohibition being received; rather, it moves to the nearest degree, namely permissibility or recommendation. And when prohibition lapses, the ruling does not move to obligation without an express command being received; rather, it moves to the nearest degree, namely permissibility or disapproval. We have explained this in the chapter on abrogation in this book.[39]

L2821–2824 Abu Muhammed said: Some of our companions who also erred in this section said that the command of the Messenger of Allah ﷺ, in the hadith of Safwan ibn ʻAssal al-Muradi, that travelers remove their leather socks for three days" imposes an obligation to remove them after the three days, and an obligation upon the resident to remove them after a day and a night. From this they concluded that someone who has wiped over them is to pray after the expiration of the two aforementioned periods until he removes his leather socks. They did not require him thereafter to wash his feet anew or repeat his ablution. Abu Bakr ibn Dawud—may Allah have mercy upon them both—rejected this, and he was right to reject it.

Abu Muhammed said: The aforementioned report contains neither an obligation to remove the leather socks nor a prohibition against removing them. It contains only a prohibition against performing an additional wiping. After either of the two periods expires, the person has the choice between removing them and praying without renewing his ablution or washing his feet, and leaving them on and praying on the strength of the previous wiping, so long as his ablution has not been invalidated. Once his ablution has been invalidated, wiping becomes forbidden to him. When wiping becomes forbidden to him, the obligation of ablution binds him, and he must then wash his feet.

[39]**Translator's note (L2819):** The quoted instruction explicitly says "twice" (اثنتين); this wording has been retained rather than replaced with the familiar wording of the report. The supplied text gives Laqit's tribal affiliation as al-Iyadi (الأيادي), although this report is commonly attributed to Laqit ibn Sabrah al-ʻUqayli. The supplied affiliation has been preserved.

قال أبو محمد: وقال بعض من غلط في هذا الفصل أيضا من أصحابنا إن أمر رسول الله صلى الله عليه وسلم في حديث صفوان بن عسال المرادي ألا ينزع المسافرون الخفاف ثلاثا، إيجاب لنزعها بعد الثلاث، وإيجاب على المقيم نزعها بعد يوم وليلة، فأوجبوا من ذلك أن يصلي الماسح بعد انقضاء الأمدين المذكورين، حتى ينزع خفيه، ولم يوجبوا عليه بعد ذلك أن يجدد غسل رجليه، ولا إعادة وضوئه، وأنكر ذلك أبو بكر بن داود رحمهما الله وأصاب في إنكاره. قال أبو محمد: وليس في الحديث المذكور إيجاب نزع الخفين ولا المنع من نزعهما وإنما فيه المنع من إحداث مسح زائد فقط، وهو الخيار بعد انقضاء أحد الأمدين بين أن ينزع ويصلي دون تجديد وضوء ولا غسل رجليه، وبين ألا ينزعهما ويصلي بالمسح المتقدم ما لم ينتقض وضوءه، فإذا انتقض وضوءه فقد حرم عليه المسح، وإذا حرم عليه المسح لزمه فرض الوضوء، فلا بد حينئذ من غسل الرجلين، وإذا لم يكن بد من غسل الرجلين فلا سبيل إلى ذلك إلا بإزالة الخفين فحينئذ لزم نزع الخفين، لا قبل أن يحدث. وبلغنا عن بعض أصحابنا أنه يقول إن قول رسول الله صلى الله عليه وسلم الماء لا ينجسه شيء دليل على أن ما عداه ينجس، فيقال له وبالله تعالى التوفيق: هذا ليس بشيء لوجوه: أولها أنها دعوة مجردة بلا دليل، ويقال: ما الفرق بينك وبين من قال: بل ما هو إلا دليل على أنه مثل الماء في أنه لا ينجس؟ فإن قال: هذا قياس والقياس باطل، قيل له: هل كان القياس

Since his feet must be washed, and there is no way to do that except by removing the leather socks, removing them becomes obligatory at that point, not before he incurs a state of ritual impurity.

It has reached us that one of our companions says that the statement of the Messenger of Allah ﷺ, "Nothing renders water impure," is evidence that things other than water become impure. He should be told—and through Allah Most High comes success—that this amounts to nothing, for several reasons. First, it is a bare assertion without evidence. He should be asked: What distinguishes you from someone who says, "On the contrary, it is evidence only that other things are like water in not becoming impure"? If he says, "That is analogy, and analogy is invalid," he should be asked: Was analogy invalid for any reason other than that it constitutes a ruling without a text? He must answer yes. We then say to him: Likewise, your ruling that things other than water differ from water is a ruling without a text; there is no difference.

Another reason is that we say to him: Consider his statement ﷺ, "Food for food, like for like." Does it contain a prohibition against selling things other than food, like for like? Consider his statement ﷺ, "What an excellent condiment vinegar is!" Does it contain a ruling that everything else is a bad condiment? Consider his statement ﷺ, "When water reaches two large jars in volume, it does not bear filth," or "does not become impure"—assuming that it is more authentic than the report concerning the well of Budaʿah—can it validly establish that water amounting to less than two large jars becomes impure? Many similar instances could be found if one pursued them. If he were to say, "Texts concerning things other than those mentioned in these reports have come down, through which their rulings have been established for us," we would say to him: A text has likewise come down permitting things other than water, in His statement, Most High: {O humankind, eat

باطلا إلا لأنه حكم بغير نص؟ فلا بد له من: نعم، فنقول له: وهكذا حكمك لما عدا الماء أنه بخلاف الماء، حكم بغير نص ولا فرق ومنها أننا نقول به أرأيت قوله صلى الله عليه وسلم الطعام بالطعام مثلا بمثل أفيه منع من بيع ما عدا الطعام مثل بمثل أرأيت قوله صلى الله عليه وسلم نعم الإدام الخل أفيه حكم على أن ما عداه بئس الإدام أرأيت قوله صلى الله عليه وسلم إذا بلغ الماء قلتين لم يحمل الخبث أو لم ينجس على أنه أصح من حديث بئر بضاعة أيصح منه أن ما دون القلتين ينجس؟ ومثل هذا كثير لو تتبع، فلو قال: قد جاء فيما عدا ما ذكر في هذه الأحاديث نصوص صح بها عندنا حكمها، قلنا له: وقد جاء فيما عدا الماء نص على إباحته بقوله تعالى ف {يأيها لناس كلوا مما في لأرض حلالا طيبا ولا تتبعوا خطوات لشيطان إنه لكم عدو مبين}

of what is on the earth, lawful and good, and do not follow the footsteps of Satan; indeed, he is a manifest enemy to you.}[40][41][42]

L2825–2830 There is thus no basis for declaring any of those things forbidden except through a text concerning it, nor for declaring any of it impure because an impurity has entered it except through a text concerning it. There is no difference, and through Allah Most High comes success.

Abu Muhammed said: They argued that people unanimously agree concerning someone who says to another, "Do not give my slave a dirham until he performs such-and-such a task." They said: This entails that, once he performs it, giving him the dirham becomes obligatory.

Abu Muhammed said: This is wrong. If the person addressed gives him the dirham after that task has been completed, and the dirham belongs to the master, he is liable to make restitution if the dirham is lost and its recipient cannot be found. The evidence for this is people's unanimous agreement that the person addressed may ask the person giving the instruction, saying, "When he performs that task, shall I give him the dirham or not?" If these words entailed giving him the dirham upon his performing the aforementioned task, the inquiry by the person instructed would have no meaning. Furthermore, the community unanimously agrees that, if the person giving the instruction were to tell the person instructed, when the latter asks him, "Do not give it to him until I find something for you to work on," this would be proper speech and binding upon the person instructed. The aforementioned words contain only a prohibition against giving the dirham before the task is performed. They contain neither an instruction to give it nor a

فلا سبيل إلى تحريم شيء من ذلك إلا بنص وارد فيه، ولا إلى تنجيس شيء منه من أجل نجاسة حلته إلا بنص وارد فيه، ولا فرق، وبالله تعالى التوفيق. قال أبو محمد: واحتجوا بأن الناس مجمعون على أن من قال لآخر: لا تعط غلامي درهما حتى يعمل شغلا كذا، قالوا: فهذا يقتضي أنه إذا عمله وجب أن يعطي الدرهم. قال أبو محمد: وهذا خطأ، وإن أعطاه المقول له هذا القول الدرهم بعد انقضاء ذلك الشغل، وكان ذلك الدرهم من مال السيد:، فعليه ضمانه إن تلف الدرهم ولم يوجد المدفوع إليه، ودليل ذلك إجماع الناس على أن المقول له ذلك يسأل الآمر فيقول له: إذا عمل ذلك الشغل أعطيه الدرهم أم لا؟ فلو اقتضى هذا الكلام إعطاءه الدرهم بعمل الشغل المذكور ما كان للاستفهام المأمور به معنى، وأيضا فإن الأمة مجمعة على أن الآمر لو قال للمأمور عند استفهامه إياه: لا تعطه إياه حتى أجد لك ما تعمل فيه، أن ذلك حسن في الخطاب ولازم للمأمور، وإنما في الكلام المذكور المنع من إعطاء الدرهم قبل عمل الشغل، وليس فيه بعد عمل الشغل لا إعطاؤه ولا منعه، وذلك موقوف على أمر له حادث إما بمنع وإما بإعطاء فإن قالوا فقول الله تعالى {قاتلوا لذين لا يؤمنون بلله ولا بليوم لآخر ولا يحرمون ما حرم لله ورسوله ولا يدينون دين لحق من لذين أوتوا لكتاب حتى يعطوا لجزية عن يد وهم صاغرون} أليس إعطاؤهم الجزية مانعا من قتلهم؟. قيل لهم وبالله تعالى التوفيق: إنما في الآية الأمر بقتلهم إلى وقت إعطاء الجزية، ثم ليس فيها إلا المنع من قتلهم بعد إعطائها ولا إيجاب قتلهم ولكن لما قال رسول الله صلى الله عليه وسلم ولا يقتل ذا عهد في عهده وقال صلى الله عليه وسلم لمن كان يبعث من قواده فإن هم أبوا فسلهم الجزية، فإن هم أجابوك فاقبل منهم وكف عنهم هذا نص كلامه صلى الله عليه وسلم لكل من يبعثه إلى كتابي حربي حدثناه عبد الله بن يوسف، عن أحمد بن فتح، عن عبد الوهاب بن عيسى، عن أحمد

[40] **Translator's note (L2822):** The opening continues a negation introduced in the preceding context: the report instructs travelers not to remove their leather socks for three days. The supplied text says that the person "is to pray ... until he removes his leather socks." The argument appears to require "is not to pray," but the missing negation has not been silently supplied. "May Allah have mercy upon them both" is dual in the source, although it immediately follows the name Abu Bakr ibn Dawud.

[41] **Translator's note (L2824):** A stray letter immediately precedes the Quranic quotation in the supplied transcription; it has no clear independent meaning.

[42] **Qur'an references (L2821):** Qur'an 2:168 (Al-Baqarah).

prohibition against giving it after the task is performed. That depends upon a fresh instruction to him, either prohibiting it or directing that it be given.

If they say: What, then, of the statement of Allah Most High, {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 by hand while they are humbled}? Does their payment of the poll tax not preclude killing them? They should be told—and through Allah Most High comes success—that the verse contains only the command to kill them until the time when they pay the poll tax. Thereafter, it contains only the prohibition against killing them after they have paid it, and no obligation to kill them. However, when the Messenger of Allah ﷺ said, "Nor shall he kill a person under covenant during the term of his covenant," and when he said—may Allah bless him and grant him peace—to those commanders whom he would send out, "If they refuse, ask them for the poll tax. If they respond to you, accept it from them and refrain from acting against them"—this is the explicit wording of his speech ﷺ to everyone whom he would send against a person of the Scripture in a state of war.

ʿAbd Allah ibn Yusuf transmitted it to us, from Ahmad ibn Fath, from ʿAbd al-Wahhab ibn ʿIsa, from Ahmad ibn Muhammed, from Ahmad ibn ʿAli, from Muslim, who said: Abu Bakr ibn Abi Shaybah, Ishaq ibn Rahawayh, and ʿAbd Allah ibn Hashim related to us. Abu Bakr said: Wakiʿ ibn al-Jarrah related to us. Ishaq said: Yahya ibn Adam related to us. And ʿAbd Allah said: ʿAbd al-Rahman ibn Mahdi related to us. They all said: Sufyan al-Thawri related to us, from ʿAlqamah ibn Marthad, from Sulayman ibn Buraydah, from his father, from the Prophet ﷺ.

Abu Muhammed said: When he ﷺ said this, making clear that their blood, their property, wrongfully harming them, and taking their dependants and children captive are forbidden upon their payment of the poll tax, by the explicit wording of his statement ﷺ, "Refrain from acting against them"—refraining entails all of this. Many of those who argue against us using what we have mentioned have forgotten themselves. Concerning his prohibition ﷺ against selling a crop until it hardens, they have said that this does not

بن محمد، عن أحمد بن علي، عن مسلم قال: حدثنا أبو بكر بن أبي شيبة، وإسحاق بن راهويه، وعبد الله بن هاشم، قال أبو بكر: ثنا وكيع بن الجراح وقال إسحاق: ثنا يحيى بن آدم، وقال عبد الله، ثنا عبد الرحمن بن مهدي كلهم قالوا: ثنا سفيان الثوري، عن علقمة بن مرثد عن سليمان بن بريدة عن أبيه عن النبي صلى الله عليه وسلم قال أبو محمد فلما قال صلى الله عليه وسلم ذلك مبينا أن دماءهم وأموالهم وأذاهم بالظلم، وسبي عيالهم وأطفالهم حرام بإعطائهم الجزية بنص قوله صلى الله عليه وسلم كف عنهم فالكف يقتضي كل هذا وكثير ممن يحتج علينا بما ذكرنا قد نسوا أنفسهم فقالوا في نهيه صلى الله عليه وسلم عن بيع الزرع حتى يشتد إن ذلك غير مبيح لبيعه بعد اشتداده، ولكن حتى يضفى من تبنه ويداس. قال أبو محمد: وبيع الزرع عندنا بعد اشتداده مباح وإن لم يصف ولا ديس لقوله تعالى {لذين يأكلون لربا لا يقومون إلا كما يقوم لذي يتخبطه لشيطان من لمس ذلك بأنهم قالوا إنما لبيع مثل لربا وأحل لله لبيع وحرم لربا فمن جآءه موعظة من ربه فنتهى فله ما سلف وأمره إلى لله ومن عاد فأولئك أصحاب لنار هم فيها خالدون} فلا يخرج من هذه الجملة إلا ما جاء نص أو إجماع بتحريمه، ولهذه الجملة أجزنا بيع منخل بعد أن تزهى، والعنب بعد أن يسود، والثمر بعد أن يبدو فيه الطيب، وليس لأن هذه النواهي توجب إباحة البيع بعد حلول الصفات المذكورة فيها. وكذلك قلنا في قوله تعالى: {أحل لكم ليلة الصيام الرفث إلى نسائكم هن لباس لكم وأنتم لباس لهن علم الله أنكم كنتم تختانون أنفسكم فتاب عليكم وعفا عنكم فالآن باشروهن وابتغوا ما كتب لله لكم وكلوا واشربوا حتى يتبين لكم الخيط الأبيض من الخيط الأسود من الفجر ثم أتموا الصيام إلى الليل ولا تباشروهن وأنتم عاكفون في المساجد تلك حدود الله فلا تقربوها كذلك يبين الله آياته للناس لعلهم يتقون} وإنما حرم الأكل من حين يتبين طلوع الفجر بالأمر المتقدم لهذا النسخ، فإن الأمر

permit selling it after it hardens, but only after it is cleared of its straw and threshed.

Abu Muhammed said: In our view, selling a crop after it hardens is permitted, even if it has not been cleared or threshed, because of His statement, Most High: {Those who consume usury do not rise except as one rises whom Satan has thrown into confusion through his touch. That is because they say, "Sale is only like usury," whereas Allah has permitted sale and forbidden usury. Whoever receives an admonition from his Lord and desists may keep what has passed, and his affair rests with Allah. But whoever returns—those are the inhabitants of the Fire; they shall abide therein forever.} Nothing is excluded from this general statement except that whose prohibition is established by a text or consensus. Because of this general statement, we have permitted selling "a sieve" after it begins to ripen, grapes after they turn black, and fruit after signs of ripeness appear in it. It is not because these prohibitions entail permission to sell once the characteristics mentioned in them come about.

We have likewise said concerning His statement, Most High: {It has been made lawful for you, on the night of fasting, to have sexual relations with your wives. They are a garment for you, and you are a garment for them. Allah knew that you were betraying yourselves, so He turned toward you in forgiveness and pardoned you. Now, therefore, have intercourse with them and seek what Allah has prescribed for you. Eat and drink until the white thread becomes distinct to you from the black thread of dawn. Then complete the fast until night, and do not have intercourse with them while you are remaining in the mosques for devotional retreat. These are the limits of Allah, so do not approach them. Thus Allah makes His signs clear to people, so that they may be mindful of Him.} Eating from the time when the rising of dawn becomes evident was forbidden only by the command preceding this abrogation. For a command had already come down forbidding eating, drinking, and intercourse from the moment a person fell asleep until sunset on the following day. That was then abrogated, and intercourse, eating, and drinking were permitted to us until the time when the rising of the second dawn becomes evident. What comes after it consequently remained subject to the original previously established concerning prohibition, and by

قد كان ورد بتحريم الأكل والشرب والوطء مذ ينام المرء إلى غروب الشمس من غد، ثم نسخ ذلك وأبيح لنا الوطء، والأكل والشرب إلى حين يتبين طلوع الفجر الثاني، فبقي ما بعده على الأصل المتقدم في التحريم، وبنصوص وردت في ذكر تحريم كل ذلك بطلوع الفجر الثاني وبقوله تعالى {أحل لكم ليلة لصيام لرفث إلى نسآئكم هن لباس لكم وأنتم لباس لهن علم الله أنكم كنتم تختانون أنفسكم فتاب عليكم وعفا عنكم فلآن باشروهن وبتغوا ما كتب الله لكم وكلوا وشربوا حتى يتبين لكم لخيط لأبيض من لخيط لأسود من لفجر ثم أتموا لصيام إلى لليل ولا تباشروهن وأنتم عاكفون في لمساجد تلك حدود لله فلا تقربوها كذلك يبين لله آياته للناس لعلهم يتقون} ولو لم يكن ههنا إلا قوله تعالى {أحل لكم ليلة لصيام لرفث إلى نسآئكم هن لباس لكم وأنتم لباس لهن علم الله أنكم كنتم تختانون أنفسكم فتاب عليكم وعفا عنكم فلآن باشروهن وبتغوا ما كتب الله لكم وكلوا وشربوا حتى يتبين لكم لخيط لأبيض من لخيط لأسود من لفجر ثم أتموا لصيام إلى لليل ولا تباشروهن وأنتم عاكفون في لمساجد تلك حدود لله فلا تقربوها كذلك يبين لله آياته للناس لعلهم يتقون} ما كان فيه إيجاب الصيام ولا المنع منه وكذلك قوله صلى الله عليه وسلم أمرت أن أقاتل الناس حتى يقولوا لا إله إلا الله إنما حرم القتال بقوله صلى الله عليه وسلم فإذا قالوها عصموا مني دماؤهم وأموالهم إلا بحقها وهكذا سائر النصوص التي وردت على هذا الحسب، وبالله تعالى التوفيق

texts that state that all of this becomes prohibited at the rising of the second dawn, and by His saying, exalted is He: {It has been made lawful for you, on the night of fasting, to have sexual intercourse with your wives. They are a garment for you, and you are a garment for them. Allah knew that you were betraying yourselves, so He turned toward you and pardoned you. So now have intercourse with them, and seek what Allah has prescribed for you. Eat and drink until the white thread becomes distinct to you from the black thread, of dawn. Then complete the fast until night. Do not have intercourse with them while you are in devotional retreat in the mosques. Those are Allah's bounds, so do not approach them. Thus Allah makes His signs clear to people, so that they may be mindful of Him.} Had there been nothing here except His saying, exalted is He: {It has been made lawful for you, on the night of fasting, to have sexual intercourse with your wives. They are a garment for you, and you are a garment for them. Allah knew that you were betraying yourselves, so He turned toward you and pardoned you. So now have intercourse with them, and seek what Allah has prescribed for you. Eat and drink until the white thread becomes distinct to you from the black thread, of dawn. Then complete the fast until night. Do not have intercourse with them while you are in devotional retreat in the mosques. Those are Allah's bounds, so do not approach them. Thus Allah makes His signs clear to people, so that they may be mindful of Him.} it would have contained neither an obligation to fast nor a prohibition of it. Likewise, his saying ﷺ, "I have been commanded to fight people until they say, 'There is no god but Allah'": fighting was prohibited only by his saying ﷺ, "When they say it, they protect their blood and their property from me, except as its due right requires." The same applies to all the other texts that have come in this manner. Through Allah Most High comes success.[43][44][45][46][47][48]

[43] **Translator's note (L2825):** The phrase "until I find something for you to work on" shifts to addressing the intermediary himself; this awkward wording is retained.

[44] **Translator's note (L2826):** The supplied text says "only the prohibition against killing them." This appears inconsistent with the surrounding argument, which would be expected to deny that the verse itself supplies either a prohibition or an obligation after payment; the supplied wording is retained. The word rendered "killing them" in the second occurrence is transcribed with its letters transposed. The final salutation is incomplete in this unit and continues in the next.

L2831–2838 In this connection they cited his saying ﷺ: “Whoever sells date palms that have been pollinated, their fruit belongs to the seller, unless the buyer stipulates that it belongs to him”—or words to that effect spoken by him ﷺ. They said: This indicates that those that have not been pollinated differ from those that have been pollinated, and that their fruit belongs to the buyer. Abu Muhammed said: This provides them with no proof, because we did not rule on the basis of this report that the fruit that is pollinated belongs to the buyer. Rather, since that which is pollinated was hidden and had not yet appeared, it was nonexistent, and was part of what lay within the date palm being sold; it was therefore included in the thing sold, because it was part of it. Then we say to them: Having demonstrated the invalidity of your supposition, we shall now show you, if Allah Most High wills, your inconsistency on this point. We say: If you rule that what is left unmentioned differs from what is mentioned, what would you say to someone who told you: “Rather, what is left unmentioned here has precisely the same ruling as what is mentioned, by analogy with it”? The fruit that has not been pollinated would then also belong to the seller, by analogy with that which has been pollinated. Abu Hanifah has indeed said that there is no difference between pollination and its absence. Thus he forgot his own statement: “He ﷺ mentioned grazing livestock only because they differ from livestock that do not graze; otherwise there would not have been any point to the pre-

وذكروا في ذلك قوله صلى الله عليه وسلم من باع نخلا قد أبرت فثمرتها للبائع إلا أن يشترطها المبتاع أو كما قال صلى الله عليه وسلم قالوا فدل ذلك على أن التي لم تؤبر بخلاف التي أبرت وأنها للمبتاع. قال أبو محمد: وهذا لا حجة لهم فيه، لأننا لم نقض من هذا الحديث أن الثمرة التي تؤبر للمبتاع، لكن لما كانت التي تؤبر غائبة لم تظهر بعد كانت معدومة، وكانت بعض ما في عمق النخلة المبيعة كانت داخلة في المبيع لأنها بعضه. ثم نقول لهم: وبعد أن بينا بطلان ظنكم فنحن نريكم إن شاء الله تعالى تناقضكم في هذا المكان فنقول: إن كنتم إذا قضيتم بأن المسكوت عنه بخلاف المذكور، فما قولكم لمن قال لكم: بل ما المسكوت عنه ههنا إلا في حكم المذكور قياسا عليه؟ فتكون الثمرة التي لم تؤبر للبائع أيضا قياسا على التي أبرت؟ وقد قال أبو حنيفة: لا فرق بين الإبار وعدمه فنسي قوله لم يذكر صلى الله عليه وسلم السائمة إلا لأنها بخلاف غير السائمة ولولا ذلك لما كان في زكاة السائمة فائدة وجعل ههنا ذكره صلى الله عليه وسلم الإبار لا لفائدة وجعله كترك الإبار فبان اضطراب هؤلاء القوم جملة وبالله تعالى التوفيق. واحتج الطحاوي في إسقاط الزكاة عما أصيب في أرض الخراج بقول رسول الله صلى الله عليه وسلم منعت العراق قفيزها ودرهمها الحديث قال: فلو كان في أرض الخراج شيء غير الخراج لذكره صلى الله عليه وسلم قال أبو محمد فيقال للطحاوي أرأيت إن قال لك قائل إن قوله صلى الله عليه وسلم فيما سقت السماء العشر دليل على أن لا خراج على شيء من الأرض لأنه لو كان فيها خراج لذكره في هذا الحديث فإن قال: قد ذكر الخراج في الحديث الذي قدمنا آنفا، قيل له: وقد ذكر العشر ونصف العشر في الحديث الذي ذكر آنفا. فإن قال قائل: ما تقولون في خطاب ورد من الله تعالى أو رسوله صلى الله عليه وسلم معلقا بشرط قيل له ينظر أتقدمت ذلك الخطاب جملة حاظرة لما أباح ذلك الخطاب، أو مبيحة لما حظر، أم لم يتقدمه جملة بشيء من ذلك،

[45] **Translator’s note (L2827):** The opening words complete the salutation begun in the preceding unit.

[46] **Translator’s note (L2828):** The sentence beginning “When he said this” has an awkward, incomplete grammatical construction in the supplied text; its explanatory claim is retained without supplying a new conclusion. The verb rendered “is cleared” is transcribed in an apparently corrupt form; the subsequent wording supports this sense. The supplied word literally means “a sieve,” which cannot coherently begin to ripen. The context strongly suggests a corruption of “date palms,” but the supplied reading is retained and marked in quotation marks.

[47] **Translator’s note (L2830):** The Qur’anic quotation, repeated in full in the source, has pervasive omissions of initial alifs in words and definite articles; its recognizable wording is translated in both occurrences. The source explicitly says that the quoted passage would contain neither an obligation to fast nor a prohibition of it, despite including “Then complete the fast until night.” This apparent tension in the quotation and argument has been preserved.

[48] **Qur’an references (L2825):** Qur’an 2:275 (Al-Baqarah); Qur’an 2:187 (Al-Baqarah).

scribed alms on grazing livestock." Yet here he treated his mention ﷺ of pollination as serving no purpose, and treated it as equivalent to the absence of pollination. Thus the inconsistency of these people has become entirely apparent. Through Allah Most High comes success. Al-Tahawi argued for waiving the prescribed alms on what is produced on land subject to land tax by citing the saying of the Messenger of Allah ﷺ, "Iraq has withheld its qafiz and its dirham"—the report. He said: If anything other than land tax were due on land subject to land tax, he ﷺ would have mentioned it. Abu Muhammed said: Al-Tahawi should therefore be asked: Consider whether someone might say to you, "His saying ﷺ, 'On what the sky waters, one tenth is due,' is proof that no land tax is due on any land, because, had land tax been due on it, he would have mentioned it in this report." If he says, "He mentioned land tax in the report we presented just now," he is told: He likewise mentioned the tenth and the half-tenth in the report just cited. If someone asks, "What do you say concerning an address that has come from Allah Most High or His Messenger ﷺ and is made dependent upon a condition?" he is told: One examines whether that address was preceded by a general statement prohibiting what that address permitted, or permitting what it prohibited, or whether no general statement preceded it to either of those effects, but it was instead preceded by a general statement encompassing it together with other things, in agreement with what is in that text. One of these alternatives must necessarily apply, because the general statement explicitly expressed in His saying, exalted is He, {He is the One who created for you everything on earth, then turned toward heaven and fashioned them into seven heavens; and He knows all things}, is a general permission from which nothing departs except what has been explicitly designated and specifically distinguished as prohibited. Thus no text can fall outside this general statement. Every text that comes must necessarily either mention some of what it contains, in agreement with it, or constitute an exception to it by imposing a prohibition. If we find that a text that has come was preceded by a general statement contrary to it, we except it from that statement and leave the remainder of that general statement as it was. We prohibit only what that text prohibits, permit only what it permits, and do not go beyond it. If we find it to be in agreement with a general statement preceding it,

لكن تقدمت جملة تعمه وتعم معه غيره موافقة لما في ذلك النص. ولا بد من أحد هذه الوجوه، لأن الجملة التي نص عليها بقوله تعالى {هو لذي خلق لكم ما في لأرض جميعا ثم ستوى إلى لسمآء فسواهن سبع سماوات وهو بكل شيء عليم} مبيحة عامة لا يشذ عنها إلا ما نص عليه، وفصل بالتحريم، فلا سبيل إلى خروج شيء من النصوص عن هذه الجملة. ولا بد لكل نص ورد من أن يكون مذكورا فيه بعض ما فيها بموافقة أو يكون مستثنى منها بتحريم، فإن وجدنا النص الوارد، وقد تقدمته جملة مخالفة له، استثنيناه منها، وتركنا سائر تلك الجملة على حالها، ولم نحظر إلا ما حظر ذلك النص فقط. ولم نبح إلا ما أباح فقط، ولم نتعده، وإن وجدناه موافقا لجملة تقدمته، أبحنا ما أباح ذلك الخطاب، وأبحنا أيضا ما أباحته الجملة الشاملة له ولغيره معه، أو حظرنا ما حظره لك الخطاب، وحظرنا أيضا ما حظرته الجملة الشاملة له ولغيره معه، ولم نسقط من أجل ذلك الشرط شيئا مما هو مذكور في الجملة الشاملة له ولغيره، وهذا هو مفهوم الكلام في الطبائع في كل لغة من لغات بني آدم عربهم وعجمهم ولا يجوز غير ذلك وقد ذكرنا في باب الأخبار من كتابنا هذا بيان هذا العمل، ونظرناه بمسائل جمة، ولكن لا بد لنا أيضا ههنا من تشخيص شيء من ذلك ليتم البيان بحول الله وقوته، فليس كل أحد يسهل عليه تمثيل مسائل تقضيها الجملة التي ذكرنا، وبالله تعالى التوفيق. وليس قولنا آنفا: تقدمته جملة بمعنى تقدم وقت النزول، فليس لذلك عندنا معنى إلا في النسخ وحده، وإلا فالقرآن والحديث كله عندنا ككلمة واحدة، وكأنه نزل معا، لوجوب طاعة جميع ذلك علينا، وإنما نعني بقولنا: تقدمته أي عمت ذلك الخطاب وغيره معه، ولكن لما كنا نجعل تلك الجملة مقدمة يستثنى منها ذلك النص أو نضيفه إليها على معنى البيان لها: سمينا ورودها من أجل ما ذكرنا تقدما. قال أبو محمد فمما ذكرنا قوله تعالى {يا أيها لذين آمنوا إذا قمتم إلى لصلاة فغسلوا وجوهكم وأيديكم إلى لمرافق ومسحوا برؤوسكم وأرجلكم إلى لكعبين وإن كنتم جنبا فطهروا وإن كنتم مرضى أو

we permit what that address permits, and also permit what is permitted by the general statement encompassing it and other things together with it; or we prohibit what that address prohibits, and also prohibit what is prohibited by the general statement encompassing it and other things together with it. On account of that condition, we do not set aside anything mentioned in the general statement encompassing it and other things. This is what speech is naturally understood to mean in every language of the children of Adam, Arab and non-Arab alike, and no other interpretation is permissible. In the chapter on reports in this book of ours, we have already explained this procedure and illustrated it with numerous cases. Nevertheless, we must also give concrete examples of some of this here, so that the explanation may be complete, through Allah's might and power. For not everyone finds it easy to formulate examples of cases governed by the general statement we have mentioned. Through Allah Most High comes success. Our earlier expression, "a general statement preceded it," does not mean precedence in the time of revelation. For us, that has significance only in abrogation. Otherwise, we regard the whole Qur'an and all the reports as a single utterance, as though they had been revealed together, because we are obliged to obey all of them. By saying "preceded it," we mean only that it encompassed that address and other things together with it. But since we make that general statement a premise from which that text is excepted, or to which we add it as an explanation of that statement, we have called its occurrence "precedence" for the reason we have mentioned. Abu Muhammed said: Among the instances of what we have mentioned is His saying, exalted is He: {O you who believe, when you rise for prayer, wash your faces and your hands up to the elbows and wipe your heads and your feet up to the ankles. If you are in a state of major ritual impurity, purify yourselves. If you are ill or on a journey, or one of you has come from relieving himself, or you have touched women, and you find no water, then resort to clean earth and wipe your faces and your hands with some of it. Allah does not intend to impose any hardship upon you, but He intends to purify you and to complete His favor upon you, so that you may give thanks.} The general statement preceding this condition is His command, exalted is He, to use water as an obligation in every circumstance for anyone intending to perform obligatory or voluntary

على سفر أو جآء أحد منكم من لغائط أو لامستم لنسآء فلم تجدوا مآء فتيمموا صعيدا طيبا فمسحوا بوجوهكم وأيديكم منه ما يريد الله ليجعل عليكم من حرج ولكن يريد ليطهركم وليتم نعمته عليكم لعلكم تشكرون} فالجملة المتقدمة لهذا الشرط هي أمره تعالى باستعمال الماء فرضا على كل حال لمن أراد الصلاة الواجبة أو التطوع، فإن تيمم مع وجود الماء والصحة ولم يستعمل الماء كان عاصيا، لأنه لم يأت بما أمر به، ولأنه لم يستعمل ما أمر باستعماله في غسل أعضائه المذكورة في آية الوضوء والغسل، فإن تيمم مع وجود الماء والصحة واستعمل الماء أيضا، كان متكلفا لم يؤمر به، والمتكلف لذلك إن سلم من سلم من الإسم لم يسلم من الفضول وسوء الاختيار وقد أمر الله تعالى فيه صلى الله عليه وسلم أن يقول {قل مآ أسألكم عليه من أجر ومآ أنآ من لمتكلفين} فإن اعتقد وجوب التيمم مع استعمال الماء في حال الصحة ووجود الماء كان عاصيا كافرا، لاعتقاده ما لا خلاف أنه لم يؤمر به وزيادة في الدين وتعديه حدود الله تعالى، فلما بطلت هذه الوجوه كلها لم يبق إلا استعمال التيمم عند عدم الماء المقدور عليه في السفر وعند المرض. وهكذا القول في قوله تعالى {ومن لم يستطع منكم طولا أن ينكح لمحصنات لمؤمنات فمن ما ملكت أيمانكم من فتياتكم لمؤمنات والله أعلم بإيمانكم بعضكم من بعض فنكحوهن بإذن أهلهن وآتوهن أجورهن بلمعروف محصنات غير مسافحات ولا متخذات أخدان فإذآ أحصن فإن أتين بفاحشة فعليهن نصف ما على لمحصنات من لعذاب ذلك لمن خشي لعنت منكم وأن تصبروا خير لكم والله غفور رحيم} إلى منتهى قوله {ومن لم يستطع منكم طولا أن ينكح لمحصنات لمؤمنات فمن ما ملكت أيمانكم من فتياتكم لمؤمنات والله أعلم بإيمانكم بعضكم من بعض فنكحوهن بإذن أهلهن وآتوهن أجورهن بلمعروف محصنات غير مسافحات ولا متخذات أخدان فإذآ أحصن فإن أتين بفاحشة فعليهن نصف ما على لمحصنات من لعذاب ذلك لمن

prayer. If someone performs dry ablution while water is available and he is healthy, and does not use water, he is disobedient, because he has not done what he was commanded to do, and because he has not used what he was commanded to use in washing the bodily members mentioned in the verse concerning ablution and the full ritual bath. If he performs dry ablution while water is available and he is healthy, and also uses water, he is undertaking an unnecessary burden that he was not commanded to undertake. The person undertaking that burden, if he escapes—escapes the "name"—does not escape superfluity and poor judgment. Allah Most High commanded, concerning him ﷺ, that he say: {Say: I ask you for no recompense for it, and I am not one of those who undertake unnecessary burdens.} If he believes the obligation of performing dry ablution together with using water while healthy and when water is available, he would be disobedient and an unbeliever, because he believes in something that, without disagreement, he has not been commanded to do, adds to the religion, and transgresses the limits of Allah Most High. Since all these possibilities are invalid, nothing remains except performing dry ablution when accessible water is unavailable during travel, and during illness. The same applies to His saying, Most High: "Whoever among you lacks the means to marry believing women of protected status, then from among the believing slave women whom your right hands possess. Allah knows best your faith; you are of one another. So marry them with their owners' permission and give them their marriage dues according to what is right, as chaste women, neither fornicators nor women who take lovers. Then, when they have been given protected status, if they commit an indecency, they shall receive half the punishment imposed upon women of protected status. That is for whoever among you fears falling into sin; but that you remain patient is better for you. Allah is forgiving, merciful," through to the end of His saying: "Whoever among you lacks the means to marry believing women of protected status, then from among the believing slave women whom your right hands possess. Allah knows best your faith; you are of one another. So marry them with their owners' permission and give them their marriage dues according to what is right, as chaste women, neither fornicators nor women who take lovers. Then, when they have been given protected status, if they commit an indecency, they shall receive half

خشي لعنت منكم وأن تصبروا خير لكم والله غفور رحيم} قال أبو محمد فنظرنا هل نجد جملة متقدمة لإباحة نكاح الفتيات المؤمنات بالزواج، فوجدنا قبلها متصلا بها ذكر ما حرم الله تعالى من النساء من قوله تعالى {ولمحصنات من لنسآء إلا ما ملكت أيمانكم كتاب لله عليكم وأحل لكم ما وراء ذلكم أن تبتغوا بأموالكم محصنين غير مسافحين فما ستمتعتم به منهن فآتوهن أجورهن فريضة ولا جناح عليكم فيما تراضيتم به من بعد لفريضة إن لله كان عليما حكيما} إلى منتهى قوله فحرم الله تعالى بهذا النص كل محصنة، والإحصان يقع على معان، منها العفة، ومنها الزوجية، ومنها الحرية، فلم يجز لنا إيقاع لفظة {ة على بعض ما يقع تحتها دون بعض، بالبراهين التي ذكرنا في باب العموم، فحرم بقوله تعالى: كل عفيفة من أمة أو حرة، وكل حرة، وكل ذات زوج، وقد حرم الزواني من الإماء والحرائر بقوله تعالى { لزانية ولزاني فجلدوا كل واحد منهما مئة جلدة ولا تأخذكم بهما رأفة في دين لله إن كنتم تؤمنون بلله وليوم لآخر وليشهد عذابهما طآئفة من لمؤمنين} فحرمت كل امرأة في الأرض بهذين النصين إلا ما استثنى من ذلك بنص أو إجماع. ثم قال تعالى متصلا بالتحريم المذكور غير مؤخر لبيان مراده تعالى {ولمحصنات من لنسآء إلا ما ملكت أيمانكم كتاب لله عليكم وأحل لكم ما وراء ذلكم أن تبتغوا بأموالكم محصنين غير مسافحين فما ستمتعتم به منهن فآتوهن أجورهن فريضة ولا جناح عليكم فيما تراضيتم به من بعد لفريضة إن لله كان عليما حكيما} فأباح تعالى ما شاء مما ملكت أيماننا، وليس في هذا إباحة الزواج ثم زادنا تعالى بيانا متصلا فقال {ولمحصنات من لنسآء إلا ما ملكت أيمانكم كتاب لله عليكم وأحل لكم ما وراء ذلكم أن تبتغوا بأموالكم محصنين غير مسافحين فما ستمتعتم به منهن فآتوهن أجورهن فريضة ولا جناح عليكم فيما تراضيتم به من بعد لفريضة إن لله كان عليما حكيما} فاستثنى تعالى الزواج أيضا بالإباحة المذكورة.

the punishment imposed upon women of protected status. That is for whoever among you fears falling into sin; but that you remain patient is better for you. Allah is forgiving, merciful." Abu Muhammed said: We therefore examined whether we could find a preceding statement permitting the taking of believing slave women in marriage. Immediately before it, connected with it, we found mention of the women whom Allah Most High has forbidden, in His saying, Most High: "And women of protected status among women, except those whom your right hands possess: Allah's prescription for you. Lawful to you are those beyond these, that you seek them with your wealth, seeking chastity, not fornication. For whatever enjoyment you have had of them, give them their marriage dues as an obligation. There is no blame upon you concerning whatever you mutually agree upon after the obligation. Indeed, Allah is knowing, wise," through to the end of His saying. By this text, Allah Most High thus forbade every woman of protected status. Protected status has several meanings, including chastity, marriage, and freedom. It was therefore impermissible for us to apply the expression [corrupt text] to some of what falls within its scope to the exclusion of the rest, on the demonstrations we have presented in the chapter on generality. Thus, by His saying, Most High, He forbade every chaste woman, whether enslaved or free, every free woman, and every married woman. He had already forbidden fornicating women, both enslaved and free, by His saying, Most High: " The female fornicator and the male fornicator: flog each of them with a hundred lashes, and let no pity for them take hold of you in Allah's religion, if you believe in Allah and the Last Day; and let a group of the believers witness their punishment." Thus, every woman on earth was forbidden by these two texts, except whatever was excepted from that by a text or consensus. Then He said, Most High, in direct connection with the prohibition just mentioned, without delaying the clarification of His intention, Most High: "And women of protected status among women, except those whom your right hands possess: Allah's prescription for you. Lawful to you are those beyond these, that you seek them with your wealth, seeking chastity, not fornication. For whatever enjoyment you have had of them, give them their marriage dues as an obligation. There is no blame upon you concerning whatever you mutually agree upon after the obligation. Indeed,

Allah is knowing, wise." Thus He, Most High, permitted whatever He willed of those whom our right hands possess, and this contains no permission for marriage. Then He, Most High, gave us further clarification in direct connection with this, saying: "And women of protected status among women, except those whom your right hands possess: Allah's prescription for you. Lawful to you are those beyond these, that you seek them with your wealth, seeking chastity, not fornication. For whatever enjoyment you have had of them, give them their marriage dues as an obligation. There is no blame upon you concerning whatever you mutually agree upon after the obliga-

tion. Indeed, Allah is knowing, wise." Thus He, Most High, also excepted marriage through the permission mentioned.[49][50][51][52][53]

[49]**Translator's note (L2831):** In the author's explanation, the source twice reads "that which is pollinated," without the negation required by the apparent argument about fruit that has not yet appeared. Both affirmative readings have been preserved.

[50]**Translator's note (L2832):** A qafiz is a measure of capacity; the qafiz and dirham here represent the payments mentioned in the cited report. The phrase "the report" indicates that only the opening of the report is quoted.

[51]**Translator's note (L2833):** The Qur'anic quotation contains omissions of initial alifs in several words; the recognizable wording is translated.

[52]**Translator's note (L2835):** The source reads "what that address prohibits" with an apparently defective demonstrative, literally "what the address prohibits for you"; the intended reference to the same address is clear from the parallel clauses. The opening of the Qur'anic quotation contains omissions of initial alifs.

[53]**Translator's note (L2836):** The unvocalized wording "and your feet" follows "wipe your heads." It is rendered within the scope of "wipe" without adding a separate command to wash. The source has a repeated phrase, literally "if he escapes escapes," followed by "the name" (al-ism), apparently a corruption of "sin" (al-ithm). The repetition and transmitted word are retained rather than silently repaired. The Qur'anic quotations contain omissions of initial alifs in several words.

[54]**Translator's note (L2837):** "Protected status" renders iḥṣān, and "women of protected status" renders muḥṣanāt. The author expressly argues from the term's several meanings: chastity, marriage, and freedom. The corresponding wording in the quotations is kept broad to preserve that argument; in the first quotation, the initial and punishment-related occurrences ordinarily refer to free women, while "when they have been given protected status" can refer to marriage. After "the expression," the supplied text has only an opening quotation marker and an isolated Arabic letter, rather than a recoverable word. This is marked as corrupt without supplying the likely missing expression. The first Quranic quotation, corresponding to 4:25, is supplied twice in full, despite the intervening phrase "through to the end of His saying"; both occurrences are retained. The quotation corresponding to 4:24 likewise extends beyond the particular wording discussed by the author.

[55]**Translator's note (L2838):** The opening completes the quotation begun in the preceding unit. The same full quotation corresponding to Quran 4:24 appears twice, although the author's successive comments concern distinct clauses. Both occurrences are retained as supplied. "Women of protected status" preserves the multiple meanings of muḥṣanāt on which the preceding argument depends: chaste, married, or free women.

[56]**Qur'an references (L2831):** Qur'an 2:29 (Al-Baqarah); Qur'an 4:43 (An-Nisa); Qur'an 5:6 (Al-Ma'idah); Qur'an 38:86 (Sad); Qur'an 4:25 (An-Nisa); Qur'an 4:24 (An-Nisa); Qur'an 24:2 (An-Nur).

L2839–2840 The application of this is extensive, but the concise statement and ultimate point concerning it is the saying of Allah Most High: “He created for you everything that is on earth.” This is a verse such that, if we were left with its apparent meaning, everything Allah Most High created on earth would be lawful for us. But Allah Most High forbade certain things on earth, and these were therefore excepted from the general permission. Among these is His saying, Most High: “Tell the believing men to lower their gazes and guard their private parts,” and: “Tell the believing women to lower their gazes and guard their private parts,” together with the verse we recited just now, from His saying, Most High, in the verse of prohibition: “And women of protected status among women.” If we were left with these two texts, all women would be forbidden and would be excepted from the general permission. Then He said, Most High: “And those who guard their private parts, except with their spouses or those whom their right hands possess, for then they are not blameworthy. But whoever seeks beyond that—it is they who are the transgressors.” Thus Allah, Mighty and Majestic, excepted spouses and those possessed by the right hand from the totality of forbidden women. If we were left with this verse, every woman would be lawful specifically through marriage and solely through possession by the right hand, not through fornication, whether a mother, a daughter, or a female relative within the prohibited degrees, because married women and women held in ownership are a subset of women. This verse agrees with His saying, Most High: “So marry such women as are pleasing to you,” and with His saying, Most High: “And marry off the unmarried among you and the righteous among your male slaves and your female slaves.” There is no difference between any of these verses. Then He said, Most High: “Forbidden to you are your mothers and your daughters”—the verse through to the end of His saying: “And that you unite two sisters.” And He said, Most High: “Do not marry those women whom your fathers married, except what has already passed.” And He said, Most High: “Do not

والعمل في هذا يكثر إلا أن اختصار القول والغاية في ذلك قول الله تعالى {خلق لكم ما في الأرض جميعا} فهذه آية لو تركنا وظاهرها لكان كل ما خلق الله تعالى في الأرض حلالا لنا، لكن حرم الله تعالى أشياء مما في الأرض فكانت مستثناة من جملة التحليل فمن ذلك قوله تعالى {قل للمؤمنين يغضوا من أبصارهم ويحفظوا فروجهم} {وقل للمؤمنات يغضضن من أبصارهن ويحفظن فروجهن} مع الآية التي تلونا آنفا من قوله تعالى في آية التحريم {والمحصنات من النساء} فلو تركنا وهذين النصين لحرم النساء كلهن وكن مستثنيات من جملة التحليل ثم قال تعالى {والذين هم لفروجهم حافظون إلا على أزواجهم أو ما ملكت أيمانهم فإنهم غير ملومين فمن ابتغى وراء ذلك فأولئك هم العادون} فاستثنى الله عز وجل من جملة النساء المحرمات، الأزواج وملك اليمين، فلو تركنا وهذه الآية لحلت كل امرأة بالزواج خاصة، وبملك اليمين فقط، لا بالزنى من أم أو إبنة أو حريمة، لأن المتزوجات والمملوكات بعض النساء وكانت هذه الآية موافقة لقوله تعالى {فانكحوا ما طاب لكم من النساء} ولقوله تعالى {وأنكحوا الأيامى منكم والصالحين من عبادكم وإمائكم} ولا فرق بين شيء من هذه الآيات ثم قال تعالى {حرمت عليكم أمهاتكم وبناتكم} الآية إلى منتهى قوله {وأن تجمعوا بين الاختين} وقال تعالى {ولا تنكحوا ما نكح آباؤكم من النساء إلا ما قد سلف} وقال تعالى {ولا تنكحوا المشركات حتى يؤمن} وقال تعالى {ولا تنكحوا المشركين حتى يؤمنوا}

marry polytheist women until they believe." And He said, Most High: "Do not give in marriage to polytheist men until they believe."[57][58]

L2841–2843 And the Prophet, may Allah bless him and grant him peace ﷺ, forbade uniting a woman and her paternal aunt, and a woman and her maternal aunt, in marriage. He prohibited on grounds of suckling what is prohibited on grounds of kinship by descent. The text prohibited the deed of the people of Lot, marrying female fornicators, and Muslim women's marrying male fornicators. And there was prohibition by consensus and by the text, in His saying, Most High: "If you fear that you will not deal equitably with the 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 conducive to your not acting unjustly," through to His saying, Most High: "If you fear that you will not deal equitably with the 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 conducive to your not acting unjustly." And intercourse with animals and with a polytheist woman, and also by the indication of the text. Thus everything we have mentioned was excepted from the women permitted through marriage and possession by the right hand, because what is included in these texts is narrower than what is mentioned in the verse permitting spouses and possession by the right hand. And He said, Most High: "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 women of protected status among the believing women, and women of protected status among those who were given

وحرم النبي صلى الله عليه وسلم الجمع بين المرأة وعمتها وبين المرأة وخالتها، وحرم بالرضاعة ما يحرم من النسب، وحرم النص فعل قوم لوط، ونكاح الزواني ونكاح الزناة للمسلمات، وحرم بالإجماع والنص بقوله تعالى {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} إلى قوله تعالى {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} ووطء البهائم، والمشركة، وبدليل النص أيضا، فكان كل ما ذكرنا مستثنى مما أبيح من النساء بالزواج وملك اليمين، لأن ما في هذه النصوص أقل مما ذكر في آية إباحة الأزواج وملك اليمين 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} إلى قوله عز وجل {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} فاستثنى تعالى الكتابيات بالنكاح خاصة، وهذا يقع على الإماء منهن والحرائر وبقيت الأمة الكتابية حراما وطؤها بملك اليمين خاصة وبقوله تعالى {ولا تنكحوا لمشركات حتى يؤمن ولأمة مؤمنة خير من مشركة ولو أعجبتكم ولا تنكحوا لمشركين حتى يؤمنوا ولعبد مؤمن خير من مشرك ولو أعجبكم أولئك يدعون إلى لنار ولله يدعو إلى لجنة ولمغفرة بإذنه ويبين آياته للناس

[57] **Translator's note (L2840):** "Women of protected status" preserves the several meanings of muḥṣanāt invoked in the preceding argument. The supplied ḥarīma is rendered "a female relative within the prohibited degrees"; its precise range here is not specified. The final quotation omits the object of "give in marriage," as does the supplied Arabic.

[58] **Qur'an references (L2839):** Qur'an 2:29 (Al-Baqarah); Qur'an 24:30 (An-Nur); Qur'an 24:31 (An-Nur); Qur'an 4:24 (An-Nisa); Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun); Qur'an 70:31 (Al-Ma'arij); Qur'an 4:3 (An-Nisa); Qur'an 24:32 (An-Nur); Qur'an 4:23 (An-Nisa); Qur'an 4:22 (An-Nisa); Qur'an 2:221 (Al-Baqarah).

the Scripture before you, when you give them their marriage dues, seeking chastity, neither fornicating nor taking lovers. Whoever disbelieves in faith, his work has come to nothing, and in the Hereafter he will be among the losers," through to His saying, Mighty and Majestic: "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 women of protected status among the believing women, and women of protected status among those who were given the Scripture before you, when you give them their marriage dues, seeking chastity, neither fornicating nor taking lovers. Whoever disbelieves in faith, his work has come to nothing, and in the Hereafter he will be among the losers." Thus He, Most High, excepted women of the People of the Scripture specifically through marriage. This applies to both their enslaved women and their free women. Intercourse with an enslaved woman of the People of the Scripture remained forbidden specifically through possession by the right hand, also by His saying, Most High: "Do not marry polytheist women until they believe. A believing slave woman is better than a polytheist woman, even if she pleases you. And do not give in marriage to polytheist men until they believe. A believing male slave is better than a polytheist man, even if he pleases you. Those call to the Fire, while Allah calls to the Garden and forgiveness by His permission, and He makes His signs clear to people so that they may take heed." Nor has anything occurred in any of the texts that permits her. Then we examined His saying, Most High: "Whoever among you cannot the means to marry free believing women, then [marry] from among the believing slave women whom your right hands possess. Allah knows your faith best; you are of one another. So marry them with their owners' permission and give them their marriage payments according to what is right, as chaste women, neither fornicators nor women who take secret lovers. Then, when they have been taken in marriage, if they commit an indecency, they shall incur half the punishment incurred by free women. That is for whoever among you fears falling into sin; but that you remain patient is better for you. Allah is Forgiving, Merciful.} We found that in this verse He, exalted is He, mentioned only the permissibility of marrying a slave woman for someone who lacks the means and fears falling into sin. There remained the ruling concerning

لعلهم يتذكرون} ولما يأت في شيء من النصوص ما يبيحها. ثم نظرنا في قوله تعالى {ومن لم يستطع منكم طولا أن ينكح لمحصنات لمؤمنات فمن ما ملكت أيمانكم من فتياتكم لمؤمنات والله أعلم بإيمانكم بعضكم من بعض فنكحوهن بإذن أهلهن وآتوهن أجورهن بلمعروف محصنات غير مسافحات ولا متخذات أخدان فإذآ أحصن فإن أتين بفاحشة فعليهن نصف ما على لمحصنات من لعذاب ذلك لمن خشي لعنت منكم وأن تصبروا خير لكم والله غفور رحيم} فوجدناه تعالى إنما ذكر في هذه الآية إباحة نكاح الأمة لمن لم يجد طولا، وخشي العنت وبقي حكم واحد الطول الذي لا يخاف العنت فلم نجده تعالى ذكر في هذه الآية إباحة ولا تحريما عليه، فرجعنا إلى سائر الآي فوجدناه تعالى قد أباح نكاح الإماء المؤمنات لكل مسلم، ولم يخص فقيرا من غني، ولا من عنده حرة ممن ليست عنده حرة بقوله تعالى {وأنكحوا لأيامى منكم ولصالحين من عبادكم وإمائكم إن يكونوا فقرآء يغنهم الله من فضله والله واسع عليم} فكان للعبد مباحا أن ينكح حرة وأمة، وللحر أيضا كذلك ولا فرق

someone possessing the means who does not fear falling into sin: we did not find that He, exalted is He, mentioned in this verse either permission or prohibition for him. We therefore returned to the other verses and found that He, exalted is He, had permitted every Muslim to marry believing slave women, without distinguishing a poor man from a rich man, or someone who has a free wife from someone who has no free wife, in His saying, exalted is He: {Marry off the unmarried among you and the righteous among your male slaves and your female slaves. If they are poor, Allah will enrich them out of His bounty. Allah is All-Encompassing, Knowing.} Thus a male slave was permitted to marry a free woman or a slave woman, and the same likewise applied to a free man, without distinction.[59][60][61][62]

L2844–2847 Likewise, it is lawful for a Muslim to marry a slave woman belonging to the People of the Book, by His saying, exalted is He: {Today the good things have been made lawful for you. The food of those who were given the Book is lawful for you, and your food is lawful for them; and [lawful for

وكذلك الأمة الكتابية نكاحها للمسلم حلال بقوله 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} وهذا قول عثمان البتي وغيره والعجب من الحنفيين في منعهم الزكاة عن غير السائمة بذكره صلى الله عليه وسلم السائمة في حديث أنس وإباحتهم ههنا نكاح الأمة المسلمة لمن وجد طولا لحرة مسلمة فهلا سألوا أنفسهم عن الفائدة في ذكره تعالى {ومن لم يستطع منكم طولا أن ينكح لمحصنات لمؤمنات فمن ما ملكت أيمانكم من فتياتكم لمؤمنات ولله أعلم بإيمانكم بعضكم من بعض فنكحوهن بإذن أهلهن وآتوهن أجورهن بلمعروف محصنات غير مسافحات ولا متخذات أخدان فإذآ أحصن فإن أتين بفاحشة فعليهن نصف ما على لمحصنات من لعذاب ذلك لمن خشي لعنت منكم وأن تصبروا خير لكم ولله غفور رحيم} كما سألوا هناك عن الفائدة في ذكر السائمة؟ ولكن هكذا يكون من اتبع رأيه وقياسه وهواه المضل. والعجب من المالكيين في عكسهم ذلك فقالوا ليس في قوله صلى الله عليه وسلم في السائمة ما يوجب أن يسقط الزكاة من غير السائمة،

[59] **Translator's note (L2841):** The clause "And there was prohibition by consensus and by the text" lacks an explicit object in the supplied wording. The later phrase concerning intercourse with animals and a polytheist woman is also syntactically disconnected. The translation preserves these defects rather than supplying a missing prohibition. The full quotation corresponding to Quran 4:3 is repeated after "through to His saying"; both occurrences are retained. "Not acting unjustly" renders the final verb in the quotation; it has also been understood as referring to becoming burdened with dependants.

[60] **Translator's note (L2842):** The full quotation corresponding to Quran 5:5 is repeated after "through to His saying"; both occurrences are retained. "Women of protected status" renders muḥṣanāt consistently with the author's preceding discussion of chastity, marriage, and freedom. "Whoever disbelieves in faith" preserves the unusual literal wording of the Quranic quotation. The final quotation continues in the following segment; its reference to lacking the means to marry is not supplied here.

[61] **Translator's note (L2843):** The opening continues the Qur'anic quotation from the preceding segment, Qur'an 4:25. The transcription reads wāḥid al-ṭawl, literally 'one of means,' where the argument appears to require wājid al-ṭawl, 'one possessing the means'; the translation follows that apparent intended reading. In Qur'an 4:25, muḥṣanāt and uḥṣinna carry context-dependent senses associated with freedom, chastity, and marriage. Here they are rendered as 'free women,' 'chaste women,' and 'have been taken in marriage' according to their respective contexts.

[62] **Qur'an references (L2841):** Qur'an 4:3 (An-Nisa); Qur'an 5:5 (Al-Ma'idah); Qur'an 2:221 (Al-Baqarah); Qur'an 4:25 (An-Nisa); Qur'an 24:32 (An-Nur).

you are] chaste women from among the believers and chaste women from among those who were given the Book before you, when you give them their marriage payments, being chaste, neither fornicators nor men who take secret lovers. Whoever disbelieves in faith, his work has come to nothing, and in the Hereafter he is among the losers.} This is the position of ʿUthmān al-Battī and others. What is astonishing about the Hanafis is that they exclude livestock other than grazing livestock from the obligation of zakat because he—may Allah bless him and grant him peace ﷺ—mentioned grazing livestock in the report of Anas, while here they permit marriage to a Muslim slave woman for someone who possesses the means to marry a free Muslim woman. Why, then, did they not ask themselves about the purpose of His saying, exalted is He: {Whoever among you lacks the means to marry free believing women, then [marry] from among the believing slave women whom your right hands possess. Allah knows your faith best; you are of one another. So marry them with their owners' permission and give them their marriage payments according to what is right, as chaste women, neither fornicators nor women who take secret lovers. Then, when they have been taken in marriage, if they commit an indecency, they shall incur half the punishment incurred by free women. That is for whoever among you fears falling into sin; but that you remain patient is better for you. Allah is Forgiving, Merciful.}—just as they asked there about the purpose of mentioning grazing livestock? But this is how someone behaves who follows his own opinion, his analogy, and his misleading desire. What is astonishing about the Malikis is that they reverse this, saying: There is nothing in his saying—may Allah bless him and grant him peace ﷺ— concerning grazing livestock that requires zakat to be waived for livestock other than grazing livestock. Yet here they said: His mention, exalted is He, of 'one equivalent in means' and of the believing slave woman requires the prohibition of the slave woman belonging to the People of the Book. Then, at the same time, they permitted a believing slave woman to someone possessing the means. Abū Muḥammed said: Both groups have thus contradicted themselves, as you see. Some of them prohibited marriage to a believing slave woman for someone possessing the means to marry a free woman belonging to the People of the Book. There is absolutely nothing of this in the wording of the verse. Those who prohibited it did so only by

وقالوا ههنا: ذكره تعالى عادل الطول والأمة المؤمنة موجب التحريم الأمة الكتابية ثم في الوقت أباحوا الأمة المؤمنة لواجد الطول. قال أبو محمد: فكلا الفريقين تناقض كما ترى، وحرم بعضهم نكاح الأمة المؤمنة على واجد الطول بحرة كتابية وليس هذا في نص الآية أصلا، وإنما منع من منع من ذلك قياسا للكتابية على المسلمة، وقد أكذب الله تعالى هذا القياس الفاسد بقوله {أفنجعل لمسلمين كلمجرمين * ما لكم كيف تحكمون} فلو كان القياس حقا لكان هنا باطلا، وإذا قاسوا واجد الطول للحرة الكتابية على واجد الطول للحرة المسلمة، ولم ينص تعالى إلا على واجد الطول للحرة المسلمة فقط، فهلا فعلوا مثل ذلك، فقاسوا إباحة الأمة الكتابية بالنكاح لعادم الطول لحرة وخائف العنت على إباحة الأمة المؤمنة لخائف العنت وعادم الطول كما فعلوا في التي ذكرنا قبل؟. قال أبو محمد: وهذا مما تركوا فيه القول بدليل الخطاب، لأنه كان يلزمهم على أصلهم أن يقولوا: إن ذكره تعالى: المحصنات المؤمنات دليل على أن الكافرات بخلافهم، ولكن أكثرهم لم يفعلوا ذلك فنقضوا أصلهم في دليل الخطاب. ونحن وإن وافقنا أبا حنيفة في بعض قوله ههنا، فلسنا ننكر اتفاقنا مع خصومنا في هذه المسائل، وقد يجتمع المصيب والمخطىء في طريقهما الذي يطلبانه، أحدهما بالجد والبحث والعلم بيقين ما يطلب، والثاني بالجد والبحث والاتفاق، وغير منكر أن يخرجهم الرؤوف الرحيم تعالى إلى الغرض المطلوب وإن تعسفوا الطريق نحوه، ولكنهم مع ذلك تحكموا بلا دليل أصلا فقالوا: من كانت عنده حرة فحرام عليه نكاح الأمة، وهذا قول ليس في النص ما يوجبه أصلا،

drawing an analogy between a woman belonging to the People of the Book and a Muslim woman. Allah, exalted is He, has declared this corrupt analogy false by His saying: {Shall We then make the Muslims like the criminals? * What is the matter with you? How do you judge?} Even if analogy were valid, it would be invalid here. And if they drew an analogy between someone possessing the means to marry a free woman belonging to the People of the Book and someone possessing the means to marry a free Muslim woman, although He, exalted is He, expressly mentioned only someone possessing the means to marry a free Muslim woman, why did they not do likewise and draw an analogy between the permissibility of marrying a slave woman belonging to the People of the Book for someone who lacks the means to marry a free woman and fears falling into sin, and the permissibility of a believing slave woman for someone who fears falling into sin and lacks the means, as they did in the case we mentioned previously? Abū Muḥammed said: This is one of the matters in which they abandoned reliance on contrary implication, for their own principle would have required them to say that His mention, exalted is He, of free believing women indicates that unbelieving women are subject to a different ruling. But most of them did not do this, and thus they overturned their own principle concerning contrary implication. Although we agree with Abū Ḥanīfa in part of his position here, we do not deny that we agree with our opponents on these questions. Someone who is right and someone who is mistaken may come together on the path they seek: the one through diligence, investigation, and knowledge with certainty of what he seeks, and the other through diligence, investigation, and chance. Nor is it inconceivable that the Most Compassionate the Merciful, exalted is He, should bring them to the desired goal, even though they take a tortuous path toward it. Nevertheless, they have laid down arbitrary rulings without any evidence whatsoever, saying: Whoever has a free wife is forbidden to marry

a slave woman. This is a statement for which the text provides absolutely no basis.[636465]

L2848–2852

Our position on this is that of ʿUthmān al-Battī and others. It has been related from Mālik that he permitted marrying a slave woman in addition to a free wife if the free wife consented to it. Abū Ḥanīfa and his companions permitted marrying a Muslim slave woman or one belonging to the People of the Book for someone possessing the means to marry a free Muslim woman, even if he did not fear falling into sin, provided that he had no free wife. Thus, from each person's position, one takes whatever he has got right. What we have mentioned therefore makes clear that Allah, exalted is He, has made the free women and slave women of the People of the Book lawful in marriage, while those of them held in ownership remain prohibited, on the grounds of demonstrations we have mentioned in the chapter on reports in this book of ours. It is said to them: You prohibited marriage to a slave woman belonging to the People of the Book and said, 'She is not like a Muslim slave woman, such that we might draw an analogy between them.' Yet you have contradicted yourselves: you permitted marriage to a free woman belonging to the People of the Book for someone possessing the means to marry a free Muslim woman, even if he did not fear falling into sin, while prohibiting him from marrying a Muslim slave woman. Some of them even said that someone possessing the means to marry a free woman belonging to the People of the Book was not permitted to marry a Muslim slave woman; and it was decreed that some of them did not put the free man belonging to the People of the Book to death for the Muslim. There is no disagreement between any two Muslims that a Muslim slave woman is better, in the sight of Allah, mighty and majestic, and in the sight of every Muslim, than every

وقولنا في هذا هو قول عثمان البتي وغيره. وقد روي عن مالك إجازة نكاح الأمة على الحرة إذا رضيت بذلك الحرة، وأجاز أبو حنيفة وأصحابه نكاح المسلمة والكتابية لواجد طول لحرة مسلمة، وإن لم يخش العنت إذا لم تكن عنده حرة، فيؤخذ من قول كل واجد ما أصاب فيه، فبان بما ذكرنا تحليل الله تعالى حرائر أهل الكتاب وإماءهم في الزواج، وبقي ما ملكت منهن على التحريم لبراهين ذكرناها في باب الإخبار من كتابنا هذا. ويقال لهم: إنكم منعتم من نكاح الأمة الكتابية، وقلتم: ليست كالأمة المسلمة فنقيسها عليها، وقد تناقضتم فأبحتم نكاح الحرة الكتابية لواجد طول لحرة مسلمة وإن لم يخف عنتا، وحرمتم عليه نكاح الأمة المسلمة حتى أن بعضهم قال: إن من وجد طولا لحرة كتابية لم يحل له نكاح الأمة المسلمة وحتم أن بعضهم لم يقتل الحر الكتابي المسلم، ولا خلاف بين مسلمين أن الأمة المسلمة خير عند الله عز وجل وعند كل مسلم من كل حرة كتابية كانت في الدنيا أو تكون إلى يوم البعث. فإن قالوا: فأي معنى أو أي فائدة في قصد الله تعالى بالذكر في الآية المذكورة آنفا عادم الطول وخائف العنت والمحصنة المؤمنة والأمة المؤمنة إذا كان واجد الطول وآمن العنت والأمة الذمية والمحصنة والكافرة سواء في كل ذلك؟. قال أبو محمد: فيقال لهم وبالله تعالى التوفيق: هذا سؤال إلحاد، وقد ذكر الله تعالى في بعض الآيات التي تلونا بعض ما ذكره في غيرهن، فلم يكن ذلك متعارضا وقد قال 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} وليس تخصيصه الذين آمنوا بالذكر ههنا موجبا أن طاعة الله عز وجل لا تلزم الذين كفروا، بل هي لازمة للكفار كلزومها للمؤمنين ولا فرق وقد ذكرنا طرقا من هذا في باب الأخبار وفي باب العموم من كتابنا

[63] **Translator's note (L2845):** The transcription reads ʿādil al-ṭawl, rendered literally as 'one equivalent in means.' This is obscure in context and appears likely to be a corruption of ʿādim al-ṭawl, 'one lacking the means.'

[64] **Translator's note (L2846):** 'Contrary implication' renders dalīl al-khiṭāb: inferring from an expressly qualified ruling that the contrary ruling applies where that qualification is absent. The final divine epithet continues into the next segment.

[65] **Qur'an references (L2844):** Qur'an 5:5 (Al-Ma'idah); Qur'an 4:25 (An-Nisa); Qur'an 37:154 (As-Saffat); Qur'an 68:36 (Al-Qalam).

free woman belonging to the People of the Book who has ever existed in this world or will exist until the Day of Resurrection. If they say: What meaning or purpose, then, is there in Allah's expressly mentioning, in the verse cited just now, someone lacking the means, someone fearing falling into sin, a free believing woman, and a believing slave woman, if someone possessing the means, someone safe from falling into sin, a slave woman under a covenant of protection, and a free woman and an unbelieving woman are all alike in all of this? Abū Muḥammed said: It is said to them—and success comes through Allah, exalted is He—this is a question of impiety. In some of the verses we have recited, Allah, exalted is He, mentioned some of what He mentioned in others, yet that constituted no contradiction. He, exalted is He, has said: {O you who believe, obey Allah and obey the Messenger and those in 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 more excellent in outcome.} His singling out those who believe for mention here does not entail that obedience to Allah, mighty and majestic, is not obligatory for those who disbelieve. Rather, it is obligatory for unbelievers just as it is obligatory for believers, without distinction. We have already mentioned some instances of this in the chapter on reports and in the chapter on generality in this book of ours. Abū Muḥammed said: Likewise His saying, exalted is He: {If you fear that you will not deal equitably with the 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 conducive to your not acting unjustly.} They have all agreed with us that everyone who likewise does not fear that he will not act equitably is permitted to restrict himself to one woman and to those whom his right hand possesses. Here, then, they abandoned their doctrine concerning implication by exclusion. Their position would have required them to permit one woman alone only to someone who feared that he would not act equitably. If they say, "That is established by consensus," they are told: You have acknowledged that a sound consensus has set aside your position concerning implication by exclusion. They are also told: Question yourselves here and say, "What benefit and what meaning are there in Allah Most High specifically mentioning someone who fears that he will act equi-

هذا. قال أبو محمد: وكذلك قوله تعالى {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} وهم كلهم قد وافقونا على أن كل من لم يخف أيضا ألا يعدل فمباح له الاقتصار على واحدة وعلى ما ملكت يمينه، فتركوا ههنا مذهبهم في دليل الخطاب، وكان يلزمهم ألا يبيحوا الواحدة فقط إلا لمن خاف ألا يعدل. فإن قالوا: إن ذلك إجماع، قيل لهم: قد أقررتم أن الإجماع قد صح بإسقاط قولكم في دليل الخطاب. ويقال لهم: سلوا أنفسكم ههنا فقولوا: أي فائدة وأي معنى لقصد الله تعالى بالذكر من خاف أن يعدل؟ كما قلتم لنا: أي فائدة، وأي معنى لقصد الله تعالى بالذكر لمن خاف العنت وعدم الطول؟ وهذا ما لا انفكاك منه، والحمد لله. فإن قالوا فهلا قلتم مثل هذا في قوله تعالى {وأتموا لحج ولعمرة لله فإن أحصرتم فما ستيسر من لهدي ولا تحلقوا رؤوسكم حتى يبلغ لهدي محله فمن كان منكم مريضا أو به أذى من رأسه ففدية من صيام أو صدقة أو نسك فإذآ أمنتم فمن تمتع بلعمرة إلى لحج فما ستيسر من لهدي فمن لم يجد فصيام ثلاثة أيام في لحج وسبعة إذا رجعتم تلك عشرة كاملة ذلك لمن لم يكن أهله حاضري لمسجد لحرام وتقوا لله وعلموا أن لله شديد لعقاب} وقوله تعالى أيضا {وأتموا لحج ولعمرة لله فإن أحصرتم فما ستيسر من لهدي ولا تحلقوا رؤوسكم حتى يبلغ لهدي محله فمن كان منكم مريضا أو به أذى من رأسه ففدية من صيام أو صدقة أو نسك فإذآ أمنتم فمن تمتع بلعمرة إلى لحج فما ستيسر من لهدي فمن لم يجد فصيام ثلاثة أيام في لحج وسبعة إذا رجعتم تلك عشرة كاملة ذلك لمن لم يكن أهله حاضري لمسجد لحرام وتقوا لله وعلموا أن لله شديد لعقاب} وقوله تعالى {وما كان لمؤمن أن يقتل مؤمنا إلا خطئا ومن قتل مؤمنا خطئا فتحرير رقبة مؤمنة ودية مسلمة إلى أهله إلا أن يصدقوا فإن كان من قوم عدو لكم وهو مؤمن فتحرير

tably?"—just as you asked us, "What benefit and what meaning are there in Allah Most High specifically mentioning someone who fears falling into sin and lacks the means?" There is no escaping this, and praise belongs to Allah. If they say: Why, then, did you not say the same concerning His saying, Most High, {Complete the pilgrimage and the lesser pilgrimage for Allah. But if you are prevented, then whatever sacrificial offering is readily available. Do not shave your heads until the sacrificial offering reaches its appointed place. Whoever among you is ill or has an ailment of the head must offer a ransom of fasting, charity, or sacrifice. When you are secure, whoever enjoys the lesser pilgrimage followed by the pilgrimage must offer whatever sacrificial offering is readily available. Whoever cannot find one must fast three days during the pilgrimage and seven when you return: those are ten complete days. That is for someone whose family does not reside near the Sacred Mosque. Fear Allah, and know that Allah is severe in punishment}; and His saying, Most High, also, {Complete the pilgrimage and the lesser pilgrimage for Allah. But if you are prevented, then whatever sacrificial offering is readily available. Do not shave your heads until the sacrificial offering reaches its appointed place. Whoever among you is ill or has an ailment of the head must offer a ransom of fasting, charity, or sacrifice. When you are secure, whoever enjoys the lesser pilgrimage followed by the pilgrimage must offer whatever sacrificial offering is readily available. Whoever cannot find one must fast three days during the pilgrimage and seven when you return: those are ten complete days. That is for someone whose family does not reside near the Sacred Mosque. Fear Allah, and know that Allah is severe in punishment}; and His saying, Most High, {It is not for a believer to kill a believer except by mistake. Whoever kills a believer by mistake must free a believing slave and pay blood money to his family, unless they forgo it as charity. If he belongs to a people who are enemies of yours, while he is a believer, then a believing slave must be freed. If he belongs to a people between whom and you there is a covenant, then blood money must be paid to his family and a believing slave freed. Whoever cannot find one must fast two consecutive months, as repentance from Allah. Allah is All-Knowing, All-Wise}—so that you would hold fasting permissible for someone who can find a slave or a sacrificial offering? We say: The cases are not alike. The

رقبة مؤمنة وإن كان من قوم بينكم وبينهم ميثاق فدية مسلمة إلى أهله وتحرير رقبة مؤمنة فمن لم يجد فصيام شهرين متتابعين توبة من الله وكان الله عليما حكيما} فتوجبوا إباحة الصيام لمن وجد الرقبة والهدي؟ قلنا: لا سواء، والأصل أنه لا يلزمنا صيام فرض أصلا إلا ما أوجبه نص، كما أن الأصل إباحة نكاحة الإماء بقوله 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} وقوله تعالى {وأنكحوا لأيامى منكم ولصالحين من عبادكم وإمائكم إن يكونوا فقرآء يغنهم لله من فضله ولله واسع عليم} فلم نوجب الصوم فرضا إلا حيث أوجبه النص، وأحللنا النكاح في كلتا الآيتين لأنهما معا نص واجب وطاعته.

basic rule is that no obligatory fasting is incumbent upon us at all except what a text has made obligatory, just as the basic rule is the permissibility of marrying slave women, on the basis of His saying, Most High, {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 from among the believers and chaste women from among those who were given the Scripture before you, when you give them their bridal dues, seeking chastity, 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}; and His saying, Most High, {Marry off the unmarried among you and the righteous among your male slaves and female slaves. If they are poor, Allah will enrich them from His bounty. Allah is All-Encompassing, All-Knowing}. Thus we have imposed fasting as an obligation only where the text makes it obligatory, and we have

declared marriage lawful under both verses, because both together constitute a binding text, and obedience to it[66][67][68][69][70]

L2853 Furthermore, the ruling concerning someone who can find a slave for the expiation of sexual intercourse, someone who can find a sacrificial animal as an offering for enjoying the lesser pilgrimage followed by the pilgrimage, and someone who has sufficient wealth to provide food, clothing, or a slave for the expiation of an oath is explicitly stated: all these things are incumbent upon them. If such a person fasted, he would be disobeying Allah, Mighty and Majestic, and abandoning what the text explicitly makes obligatory upon him. The same does not apply to someone who possesses the means and is safe from falling into sin, because there is absolutely no explicit prohibition against his marrying slave women, either in a text or in a consensus. Between the two cases, therefore, there is the greatest difference. One of them, Abu Yusuf, has held that the prayer in conditions of fear, in the form transmitted

وأيضا فإن حكم واجد الرقبة في كفارة الوطء، وواجد النسك من الهدي في التمتع، وواجد الغنى في الإطعام والكسوة، والرقبة في كفارة اليمين، منصوص على لزوم كل ذلك لهم، فلو صام كان عاصيا لله عز وجل تاركا لما نص على وجوبه عليه، وليس كذلك واجد الطول وآمن العنت؛ لأنه لا نص على منعه من نكاح الإماء أصلا، لا في نص ولا في إجماع فبين الأمرين أعظم الفرق. وقد ذهب بعضهم وهو أبو يوسف إلى المنع من صلاة الخوف على ما جاءت به الروايات ولقوله تعالى {وإذا كنت فيهم فأقمت لهم لصلاة فلتقم طآئفة منهم معك وليأخذوا أسلحتهم فإذا سجدوا فليكونوا من ورآئكم ولتأت طآئفة أخرى لم يصلوا فليصلوا معك وليأخذوا حذرهم وأسلحتهم ود لذين كفروا لو تغفلون عن أسلحتكم وأمتعتكم فيميلون عليكم ميلة واحدة ولا جناح عليكم إن كان بكم أذى من مطر أو كنتم مرضى أن تضعوا أسلحتكم وخذوا حذركم إن لله أعد للكافرين عذابا مهينا} قال فدل ذلك على أنه صلى الله عليه وسلم إذا لم يكن فينا لم نصل كذلك

[66] **Translator's note (L2848):** The transcription reads kull wājid, literally 'each finder' or 'each possessor,' in the sentence about taking what each person gets right. The translation follows the apparent sense; kull wāḥid, 'each person,' may have been intended. The clause beginning wa-ḥutama anna baʿḍahum lam yaqtul al-ḥurr al-kitābī al-muslim is syntactically problematic. 'And it was decreed that some of them did not put the free man belonging to the People of the Book to death for the Muslim' is a provisional rendering; the supplied wording does not explicitly contain 'for' or 'for killing,' and does not securely establish the grammatical roles of the two men. The enumeration 'a slave woman under a covenant of protection, and a free woman and an unbelieving woman' follows the supplied conjunctions. Its wording is awkward and may be corrupt.

[67] **Translator's note (L2850):** The final phrase continues into the next segment: 'that he will not act justly.'

[68] **Translator's note (L2851):** The question about the benefit of specifically mentioning someone who fears acting equitably reads "fears that he will act equitably," without the negative found earlier. This apparent omission has been retained. The quotation of Quran 2:196 occurs twice in succession in the supplied text; both occurrences have been translated in full.

[69] **Translator's note (L2852):** The final wording, literally "a binding text and obedience to it," is syntactically irregular and appears incomplete or corrupt. The irregular ending has been retained without supplying a missing clause.

[70] **Qur'an references (L2848):** Qur'an 4:59 (An-Nisa); Qur'an 4:3 (An-Nisa); Qur'an 2:196 (Al-Baqarah); Qur'an 4:92 (An-Nisa); Qur'an 5:5 (Al-Ma'idah); Qur'an 24:32 (An-Nur).

in the reports, is prohibited, on account of His saying, Most High, {When you are among them and lead them in prayer, let a group of them stand with you, and let them take their weapons. When they have prostrated, let them be behind you, and let another group, who have not prayed, come and pray with you, taking their precautions and their weapons. Those who disbelieve wish that you would neglect your weapons and your belongings, so that they could fall upon you in a single assault. There is no blame upon you if you are troubled by rain or are ill, should you lay down your weapons; but take your precautions. Allah has prepared a humiliating punishment for the disbelievers}. He said: This indicates that when he ﷺ is not among us, we are not to pray in that manner.[71]

L2854–2856 Abu Muhammed said: The first objection to him is that it does not follow for him that the rulers should take no obligatory alms from anyone, because Allah Most High said, {Take from their wealth charity by which you cleanse them and purify them, and pray for them. Your prayers are a reassurance to them. Allah is All-Hearing, All-Knowing}. It was the Prophet ﷺ alone who was addressed by this, just as he was addressed when taught how to perform the prayer in conditions of fear; there is no difference. His inconsistency has thus become apparent. Furthermore, the Prophet's ﷺ saying, "Pray as you have seen me pray," obliges us to perform both the prayer in conditions of fear and prayer outside conditions of fear as he ﷺ was seen performing them. Likewise, his ﷺ saying, "Satisfy your alms collectors," and his ﷺ saying in the document concerning obligatory alms, "Any Muslim who is asked for it in its proper manner must give it, and whoever is asked for its difference must not give," require the rulers to collect obligatory alms by dispatching collectors. Through Allah Most High comes success.

A Section of This Chapter

Abu Muhammed said: Every expression that occurs as a negation and is then qualified by an exception introduced by the word "except" or the word "until" applies only in conjunction with that upon which it has been made conditional. Examples are the Messenger of Allah's ﷺ saying, "The prayer

[71] **Qur'an references (L2853):** Qur'an 4:102 (An-Nisa).

قال أبو محمد فأول ما يدخل عليه أنه لا يلزمه ألا يأخذ الأئمة زكاة من أحد، لأن الله تعالى قال: {خذ من أموالهم صدقة تطهرهم وتزكيهم بها وصل عليهم إن صلواتك سكن لهم والله سميع عليم} فإنما خوطب بذلك النبي صلى الله عليه وسلم كما خوطب بتعليمه كيفية صلاة الخوف ولا فرق فقد ظهر تناقضه وأيضا فإن قول النبي صلى الله عليه وسلم صلوا كما رأيتموني أصلي ملزم لنا أن نصلي صلاة الخوف وغير صلاة الخوف كما رئي صلى الله عليه وسلم يصليهما وكذلك قوله صلى الله عليه وسلم أرضوا مصدقيكم وقوله صلى الله عليه وسلم في كتاب الزكاة فمن سئلها من المسلمين على وجهها فليعطها، ومن سئل فرقها فلا يعط موجب لأخذ الأئمة الزكاة بإرسال المصدقين، وبالله تعالى التوفيق. فصل من هذا الباب قال أبو محمد: كل لفظ ورد بنفي ثم استثني منه بلفظة إلا أو لفظة حتى فهو غير جار إلا بما علق به مثل قول رسول الله صلى الله عليه وسلم لا تقبل صلاة من أحدث حتى يتوضأ ومثل لا صلاة إلا بأم القرآن ولا قطع إلا في ربع دينار فصاعدا وهذا هو المفهوم من الخطاب بالضرورة، لأنه نفى قبول الصلاة إلى أن يتوضأ، ووجب قبولها بعد الوضوء بالآية التي فيها {يا أيها لذين آمنوا إذا قمتم إلى لصلاة فغسلوا وجوهكم وأيديكم إلى لمرافق ومسحوا برؤوسكم وأرجلكم إلى لكعبين

of someone who has incurred ritual impurity is not accepted until he performs ablution"; and such sayings as, "There is no prayer except with the Mother of the Quran," and, "There is no amputation except for a quarter of a dinar or more." This is what is necessarily understood from the discourse, because he denied the acceptance of prayer until one performs ablution, and its acceptance after ablution is established by the verse containing {O you who believe, when you rise for prayer, wash your faces and your hands up to the elbows, and wipe your heads and your feet up to the ankles. If you are in a state of major ritual impurity, purify yourselves. If you are ill or on a journey, or one of you comes from relieving himself, or you have touched women, and you find no water, then seek clean earth and wipe your faces and your hands with it. Allah does not wish to impose any hardship upon you, but He wishes to purify you and complete His blessing upon you, so that you may give thanks}; and by the report, "Whoever performs ablution as he was commanded." He also denied prayer except with the Mother of the Quran and affirmed it with the Mother of the Quran, because everyone who prays must either recite the Mother of the Quran or not recite it. There is absolutely no possibility of a third alternative in any respect whatsoever. Prayer is obligatory. Since prayer is indispensable, and in it one must either recite the Mother of the Quran or omit its recitation, and someone who does not recite it is not performing prayer, then whoever recites it in it is undoubtedly performing prayer. Every adult Muslim is obligated to pray as

وإن كنتم جنبا فطهروا وإن كنتم مرضى أو على سفر أو جآء أحد منكم من لغائط أو لامستم لنسآء فلم تجدوا مآء فتيمموا صعيدا طيبا فمسحوا بوجوهكم وأيديكم منه ما يريد الله ليجعل عليكم من حرج ولكن يريد ليطهركم وليتم نعمته عليكم لعلكم تشكرون} وبالحديث: من توضأ كما أمر ونفى الصلاة إلا بأم القرآن وأثبتها بأم القرآن، لأنه لا بد لكل مصل من أن يقرأ أم القرآن أو لا يقرؤها. ولا سبيل إلى وجه ثالث أصلا بوجه من الوجوه، والصلاة فرض، فلما لم يكن بد من الصلاة ولم يكن فيها بد من قراءة أم القرآن أو ترك قراءتها، وكان من لم يقرأها ليس مصليا، فمن قرأها فيها فهو مصل بلا شك، وفرض على كل مسلم بالغ أن يصلي كما أمر، ففرض عليه أن يقرأ أم القرآن وهذا برهان ضروري قاطع

commanded; therefore, he is obligated to recite the Mother of the Quran. This is a necessary, conclusive demonstration.[72][73][74]

L2857–2859 Likewise, his ﷺ negation of amputation in general, followed by his making it obligatory, as an exception, for a quarter of a dinar or more. However, had no explicit text or consensus preceded this, we would have imposed amputation only for gold. But since Allah Most High said, "As for the male thief and the female thief, cut off their hands as recompense for what they have earned, as a deterrent punishment from Allah; and Allah is Mighty, Wise," and the Messenger of Allah ﷺ said, "May Allah curse the thief: he steals an egg and his hand is cut off, and he steals a rope and his hand is cut off," and the community unanimously agreed that, by the report concerning a quarter of a dinar, he ﷺ did not intend to abolish amputation for things other than gold, we must apply the verse in its generality. Only someone who steals less than a quarter of a dinar in gold is excluded from it. Thus, someone who steals less than a quarter of a dinar in gold is not subject to amputation; but someone who steals anything other than gold, whether little or much, whatever it may be, provided it has some value, however small, is subject to amputation under the verse and the report containing the words, "May Allah curse the thief." Abu Muhammed said: Whoever rejects this can only resort to saying that, in his ﷺ statement mentioning a quarter of a dinar, he meant its value. Abu Muhammed said: This is a claim for which there is no evidence. Whoever supposes that the Prophet ﷺ overlooked something that this critic has noticed has made a tremendous error. "We descend only

وكذلك نفيه صلى الله عليه وسلم القطع جملة ثم أوجبه مستثنى في ربع دينار فصاعدا إلا أن هذا لو لم يتقدم فيه نص أو إجماع لم قطعنا إلا في الذهب فقط ولكن لما قال تعالى {ولسارق ولسارقة فقطعوا أيديهما جزآء بما كسبا نكالا من لله ولله عزيز حكيم} وقال رسول الله صلى الله عليه وسلم لعن الله السارق يسرق البيضة فتقطع يده ويسرق الحبل فتقطع يده وأجمعت الأمة على أن حديث ربع دينار لم يقصد به صلى الله عليه وسلم إبطال القطع في غير الذهب وجب علينا أن نستعمل الآية على عمومها، فلا يخرج منها إلا سارق أقل من ربع دينار ذهب فقط. فمن سرق أقل من ربع دينار ذهب فلا قطع عليه، ومن سرق من غير الذهب شيئا، قل أو كثر، أي شيء كان له قيمة وإن قلت، فعليه القطع بالآية والحديث الذي فيه: لعن الله السارق. قال أبو محمد: ومن أبى هذا فإنما يلجأ أن يقول المراد بقوله صلى الله عليه وسلم في ذكره ربع الدينار إنما عنى القيمة قال أبو محمد وهذه دعوى لا دليل عليها وأن من ظن النبي صلى الله عليه وسلم سها عما تنبه له هذا المتعقب فقد عظم غلطه {وما نتنزل إلا بأمر ربك له ما بين أيدينا وما خلفنا وما بين ذلك وما كان ربك نسيا} وليت شعري أي شيء كان المانع لرسول الله صلى الله عليه وسلم أن يقول لا قطع إلا في قيمة ربع الدينار فصاعدا، فيكشف عنا الإشكال، وقد أمره ربه تعالى بالبيان والذي نسبوه إلى رسول الله صلى الله عليه وسلم من أنه أراد القيمة ولم يبينها فإنما هو تلبيس لا بيان، وقد أعاذ الله تعالى من ذلك. والحديث الذي فيه ذكر القيمة ليس فيه بيان بأن القطع من أجل القيمة، فليس لأحد أن يقول: إن التقويم كان من أجل القطع، إلا كان لآخر أن يقول: بل لتضمين السارق ما جنى في ذلك. قال أبو محمد: ثم يقنعوا إلا بأن

[72] **Translator's note (L2854):** The opening reads "it does not follow for him that," although the argument appears to require "it follows for him that." The supplied negative has been retained. The alms quotation reads "its difference" (farqahā), an obscure and apparently corrupt expression here. It may stand in place of "more than it" (fawqahā), but the supplied wording has been translated. "The Mother of the Quran" designates the opening chapter, al-Fatihah.

[73] **Translator's note (L2855):** The unvocalized wording concerning the feet permits different grammatical readings. The translation preserves its placement after "wipe," without inserting a second, unexpressed "wash." The report beginning "Whoever performs ablution as he was commanded" is quoted only as a fragment in the supplied text.

[74] **Qur'an references (L2854):** Qur'an 9:103 (At-Tawbah); Qur'an 4:43 (An-Nisa); Qur'an 5:6 (Al-Ma'idah).

by the command of your Lord. To Him belongs what is before us, what is behind us, and what is between that; and your Lord is never forgetful." I would dearly like to know what prevented the Messenger of Allah ﷺ from saying, "There is no amputation except for the value of a quarter of a dinar or more," thereby removing the difficulty for us, when he had been commanded by his Lord Most High to provide clarification. What they attribute to the Messenger of Allah ﷺ—that he intended the value but did not explain it—is only obfuscation, not clarification; and Allah Most High has protected him from that. The report in which value is mentioned contains no explanation that amputation is on account of the value. No one can say that the valuation was for the purpose of amputation without another being equally entitled to say, "Rather, it was to hold the thief financially liable for the damage he caused in that matter." Abu Muhammed said: Then they were content only to attribute to the one whom his Lord Most High described as compassionate and merciful toward us, and as one to whom our suffering is grievous, that he increased our confusion by his ﷺ saying, "May Allah curse the thief: he steals an egg and his hand is cut off"—that this concerned only an iron helmet used in fighting, and that he ﷺ meant an ornamented rope worth a quarter of a dinar. Besides being bare assertions devoid of evidence, these claims are also unsound, because he ﷺ did not intend by this to excuse the thief. How could he intend to excuse him while cursing him? Rather, he ﷺ intended to convey the thief's utter baseness and vileness, and that he exposes his hand

نسبوا إلى الذي وصفه ربه تعالى بأنه رؤوف بنا رحيم، وأنه عزيز عليه ما عنتنا إنه زادنا تلبيسا بقوله صلى الله عليه وسلم لعن الله السارق يسرق البيضة فتقطع يده إنه إنما في بيضة الحديد التي يقاتل بها وأنه صلى الله عليه وسلم عنى حبلا مزينا يساوي ربع دينار هذا مع أنها دعاوى بارية عارية من الأدلة فهي أيضا فاسدة لأنه صلى الله عليه وسلم لم يرد بهذا عذر السارق وكيف يريد عذره وهو يلعنه وإنما أراد صلى الله عليه وسلم شدة مهانة السارق ورذالته وأنه يبيح يده فيما لا خطب له من بيضة أو حبل، وهذا الذي لا يعقل سواه.

to lawful amputation for something of no consequence, such as an egg or a rope. No other understanding is intelligible.[75][76][77][78]

L2860–2865 They have a great mass of similar drivel that they attribute to the intention of Allah Most High and the intention of His Messenger ﷺ, although they consider themselves too dignified for anything of the kind. Among this is what they attribute to the verse concerning a testament while travelling: that the words of Allah Most High, "O you who believe, testimony among you, when death approaches one of you at the time of making a testament, shall be by two just men from among you, or two others from outside your number, if you are travelling through the land and the calamity of death befalls you. Detain them both after the prayer, and let them both swear by Allah, if you have doubts: 'We will not exchange it for a price, even if he is a near relative, nor will we conceal the testimony of Allah; otherwise we would indeed be among the sinners,'" mean "from outside your tribe." This is so inept that it cannot permissibly be attributed to anyone with the slightest knowledge of the language and the ways speech proceeds. How, then, could it be attributed to the Creator of speech and clarification, besides whom there is no god? Another instance is what some Malikis say concerning his ﷺ words to the man who proposed marriage to the woman while having nothing with him: "Look for something, even an iron ring." This speaker said that he ﷺ only required him to obtain a handsome, ornamented ring worth a quarter of a dinar. This, while they hear the man's statement that he possesses

ولهم من مثل هذا، ما ينسبونه إلى مراد الله تعالى ومراد رسوله صلى الله عليه وسلم غثائث جمة يوقرون أنفسهم عن مثلها فمن ذلك ما ينسبون إلى الآية التي في الوصية في السفر أن قول الله تعالى {يا أيها لذين آمنوا شهادة بينكم إذا حضر أحدكم لموت حين لوصية ثنان ذوا عدل منكم أو آخران من غيركم إن أنتم ضربتم في لأرض فأصابتكم مصيبة لموت تحبسونهما من بعد لصلاة فيقسمان بلله إن رتبتم لا نشتري به ثمنا ولو كان ذا قربى ولا نكتم شهادة لله إنآ إذا لمن لآثمين} أي من غير قبيلتكم وهذا من الهجنة بحيث لا يجوز أن ينسب إلى من له أدنى معرفة باللغة ومجاري الكلام، فكيف بخالق الكلام والبيان؟ لا إله إلا هو ومن ذلك قول بعض المالكيين في قوله صلى الله عليه وسلم للذي خطب المرأة ولا شيء معه التمس ولو خاتما من حديد قال هذا القائل إنما كلفه صلى الله عليه وسلم خاتما مزينا مليحا يساوي ربع دينار وهذا وهم يسمعون كلام الرجل أنه لا يملك إلا إزاره فقط وأنه لا يقدر على حيلة فيقول له صلى الله عليه وسلم ولو خاتما من حديد أفيسوغ عن عقل من له مسكة أن يظن أن رسول الله صلى الله عليه وسلم يكلف من هذه صفته خاتما بديعا يساوي ربع مثقال؟ وهذا مع ما فيه من الافتراء على رسول الله صلى الله عليه وسلم والكذب عليه فقول مفضوح ظاهر العوار لأنه لم يكن بلغ عن غلاء الحديد بالمدينة، ومنه مساحيهم ومناحلهم لعمل النخل، ودروعهم للقتال، أن يساوي خاتم منه قريبا من وزنه من الذهب، ولو نطقت بهذا مخدرة غريرة لأضحكت بقولها، وبالله عز وجل نستعين. قال أبو محمد وقد اعترض بعض الحنفيين على قوله صلى الله عليه وسلم لا قطع إلا في ربع دينار فصاعدا فقال هذا اللفظ لا يوجب قطعا في الربع دينار. قال أبو محمد: وهذه لحة ظاهرة،

[75] **Translator's note (L2857):** The wording "لم قطعنا" is grammatically irregular as transcribed; the conditional context indicates "we would not have imposed amputation," rendered here as "we would have imposed amputation only."

[76] **Translator's note (L2858):** "ثم يقنعوا إلا" appears to lack a negative particle, such as "لم." The translation conveys the apparent sense, "they were content only," while noting the defective construction. The attribution begun here continues in the next unit.

[77] **Translator's note (L2859):** "بيضة" means an egg but can also denote a helmet; the author disputes the interpretation of the report as referring to a helmet. "دعاوى بارية" in "عارية من الأدلة" is unclear and may be corrupt. "Bare assertions devoid of evidence" conveys the intelligible force of the surrounding wording without assigning a secure independent meaning to "بارية."

[78] **Qur'an references (L2857):** Qur'an 5:38 (Al-Ma'idah); Qur'an 19:64 (Maryam).

nothing but his waist-wrapper alone, and that he has no means of obtaining anything! Yet he ﷺ says to him, “Even an iron ring.” Could anyone with a shred of sense reasonably suppose that the Messenger of Allah ﷺ would require someone in this condition to obtain an exquisite ring worth a quarter of a mithqal? Besides the fabrication against the Messenger of Allah ﷺ and the lying about him that this involves, it is a disgraceful statement whose defect is manifest. For no report had come of iron being so expensive in Medina—iron from which they made their spades and sieves for work on the date palms, and their armour for battle—that a ring made from it would be worth nearly its weight in gold. Had a sheltered, inexperienced woman uttered this, her statement would have provoked laughter. And it is Allah, Mighty and Majestic, whose help we seek. Abu Muhammed said: One of the Hanafis objected to his ﷺ statement, “There is no amputation except for a quarter of a dinar or more,” saying, “This wording does not make amputation obligatory for a quarter of a dinar.” Abu Muhammed said: This is manifest insolence and brazen audacity that no one with any shame in his face would accept for himself. He is like someone who says, concerning “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 has been eaten by a predatory beast—except what you slaughter—and what 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 favour upon you, and approved Islam as your religion. But whoever is compelled by severe hunger, without inclining toward sin—then Allah is Forgiving, Merciful,” that this wording entails neither a prohibition nor a prevention. And whoever says in a case like this that this address does not make amputation obligatory for a quarter of a dinar, and that “There is no prayer except with recitation of the Quran” does not make recitation obligatory, then says of commands that they are not binding and that they indicate recommendation, then says of expressions that they have specific scope, then says of speech that it does not bear its apparent meaning, then abandons the explicit text and does not judge according to it,

ومجاهرة لا يرضاها لنفسه من في وجهه حياء وهو بمنزلة من قال {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} أن هذا اللفظ لا يوجب نهيا ولا منعا ومن قال في مثل هذا إن هذا الخطاب لا يوجب القطع في ربع دينار وأن لا صلاة إلا بقراءة القرآن ألا يوجب القراءة ثم قال في الأوامر أنها غير لازمة وأنها على الندب ثم قال في الألفاظ إنها على الخصوص ثم قال في الكلام إنه ليس على ظاهره ثم ترك النص فلم يحكم به ثم أتى إلى أشياء لم تنص فحرمهاوأحلها برأيه فما نعلم أحدا ولا الحلاج ولا الغالية من الروافض أشد كيدا للإسلام منه وأما الجاهل فهو معذور وأما من قامت عليه الحجة فتمادى فهو فاسق بلا شك وسيرد فيعلم وما توفيقنا إلا بالله فإن قال قائل إن مثل هذا قوله صلى الله عليه وسلم لا إيمان لمن لا أمانة له قيل له وبالله تعالى التوفيق هذا على ظاهره ونعم لا إيمان أصلا لمن لا أمانة له ولا يجوز أن نخص بذلك أمانة دون أمانة والإسلام هو الأمانة التي عرضها الله تعالى على السماوات والأرض وقبول الشرائع فمن عدم هذه الأمانة التي هي بعض الأمانات فلا إيمان له ومن قيل فيه لا أمانة له فهو محمول على كل أمانة لا على بعضها دون بعض وأما قوله صلى الله عليه وسلم لا يؤمن من لا يأمن جاره بوائقه فكذلك نقول: إن الفعل المذموم منه ليس إيمانا، لأن الإيمان هو جميع الطاعات، والمعصية إذا فعلها فليس فعله إياها إيمانا، فإذا لم يفعل الإيمان فلم يؤمن، يعني في تركه ذلك الفعل خاصة، وإن كان مؤمنا بفعله للطاعات في سائر أفعاله، وقد بينا هذا في كتاب الفصل والإيمان هو الطاعات كلها، وليس التوحيد

then turns to things for which no explicit text has been given and declares them forbidden or lawful by his own opinion—we know of no one, neither al-Hallaj nor the extremists among the Rafidites, who plots more intensely against Islam than he does. As for the ignorant person, he is excused; but someone against whom the proof has been established and who persists is undoubtedly a transgressor. He will be brought back, and then he will know. Our success comes only through Allah. If someone says, "An instance of this is his ﷺ statement, 'There is no faith in someone who has no trustworthiness,'" He is told—and success comes through Allah Most High: This bears its apparent meaning, and yes, there is absolutely no faith in one who has no trustworthiness. We may not restrict this to one trust rather than another. Islam is the trust that Allah Most High offered to the heavens and the earth, and it is acceptance of the revealed laws. Whoever lacks this trust, which is one among the trusts, has no faith. When someone is described as having "no trustworthiness," this is understood to concern every trust, rather than some trusts to the exclusion of others. As for his statement ﷺ, "One whose neighbor is not safe from his mischief does not believe," we likewise say that the blameworthy act he commits is not faith, because faith consists of all acts of obedience. When he commits an act of disobedience, his committing it is not faith. Thus, when he has not enacted faith, he has not believed—meaning specifically in his omission of that act—even though he is a believer through the acts of obedience he performs in the rest of his actions. We have explained this in The Book of Distinctions. Faith consists of all acts of obedience; the affirmation of Allah's oneness alone is not the entirety of faith. Thus, "He has no faith" means "He has no obedience." Likewise, when he disobeys, he has not obeyed; and when he has not obeyed, he has not believed. It does not follow against us that, if he has not believed in some of his circumstances, he has thereby disbelieved, or that he does not believe in all the rest of them. Rather, when he has not obeyed, he has not believed with respect to the matter in which he disobeyed, while he has believed with respect to that in which he obeyed. If someone says, "This obliges you to say that he is a believer and not a believer," we say: Yes, he is a believer with respect to that in which he has believed, and not a believer with respect to that in which he has not believed. This is something known necessarily. We

وحده إيمانا فقط، فمعنى: لا إيمان له أي لا طاعة، وكذلك إذا عصى فلم يطع، وإذا لم يطع فلم يؤمن، وليس يلزمنا أنه إذا لم يؤمن في بعض أحواله أنه كفر، ولا أنه لا يؤمن في سائرها لكن إذا لم يطع فلم يؤمن في الشيء الذي عصى به وآمن فيما أطاع فيه. فإن قال: أنه يلزمكم بهذا أن تقولوا: إنه مؤمن لا مؤمن، قلنا نعم، هو مؤمن بما آمن به، غير مؤمن فيما لم يؤمن به، وهذا شيء يعلم ضرورة، ولم نقل إنه مؤمن لا مؤمن على الإطلاق، وهكذا يلزم خصومنا في مسيء ومحسن ولا فرق. فإن قلتم: من أحسن في جهة وأساء في أخرى فهو مسيء عاص فيما أساء فيه، ومحسن طائع فيما أحسن فيه، أفترى يلزمكم من هذا أن تقولوا: هو عاص طائع ومحسن مسيء على الإطلاق؟ ونحن لا نأبى هذا إذا كان من وجهين مختلفين ولا نعيب به أحدا.

have not said that he is a believer and not a believer without qualification. The same consequence applies to our opponents concerning an evildoer and a doer of good, without any difference. For if you say that someone who does good in one respect and evil in another is an evildoer and disobedient with respect to the evil he does, and a doer of good and obedient with respect to the good he does, do you think this obliges you to say that he is disobedient and obedient, and a doer of good and an evildoer without qualification? We ourselves do not reject this when it is in two different respects, nor do we fault anyone for it.[79][80][81]

L2866–2868 As for someone who says that "There is no prayer for one who has not recited" and "There is no fasting for one who will not have resolved upon it during the night" merely mean "There is no complete prayer," this is a claim for which there is no evidence. Moreover, even if their statement were correct, it would count against them, not in their favor, because when prayer is not complete, it is part of a prayer, and part of a prayer is not accepted unless it is completed, just as fasting for part of a day is not accepted until the day is completed. If someone says, "It only means that it is a complete prayer, but another prayer is more complete than it," this is obfuscation. When prayer has been completed with all its obligatory components, no other prayer is more complete than it in being a prayer. Rather, the person's recitation and prolongation of it have increased—things whose omission would do no harm, and without which his prayer would not be called deficient. He Most High has commanded the completion of fasting and the establishment of prayer. Whoever has neither established it nor completed his fasting has neither prayed nor fasted, because he has not performed what he was com-

وأما من قال: لا صلاة لمن لم يقرأ ولا صيام لمن لن يبيته من الليل إنما معناه لا صلاة كاملة، فهذه دعوى لا دليل عليها، وأيضا فلو صح قولهم لكان عليهم لا لهم، لأن الصلاة إذا لم تكن كاملة فهي بعض صلاة، وبعض الصلاة لا تقبل إذا لم تتم، كما أن صيام بعض يوم لا يقبل حتى يتم اليوم، فإن قال: إنما معناه أنها صلاة كاملة، إلا أن غيرها أكمل منها، فهذا تمويه، لأن الصلاة إذا تمت بجميع فرائضها فليس غيرها أكمل منها في أنها صلاة، ولكن زادت قراءته وتطويله الذي لو تركه لم يضر، ولا سميت صلاته دون ذلك ناقصة، وقد أمر تعالى بإتمام الصيام وإقامة الصلاة، فمن لم يقمها ولا أتم صيامه فلم يصل ولا صام، لأنه لم يأت بما أمر به، وإنما فعل غير ما أمر به والناقص غير التام وقد قال صلى الله عليه وسلم من عمل عملا ليس عليه أمرنا فهو رد وليس هذا مما يكتفى به في إقامة الصلاة وإتمام الصيام فقط، لكن كل ما جاءت به الشريعة زائدا أبدا ضم إلى هذا. ومن العجب العجيب أن قوما لم يبطلوا الصلاة بما أبطلها به صلى الله عليه وسلم من عدم القراءة لأم القرآن ومن ترك إقامة الأعضاء في الركوع والسجود، ومن فساد الصفوف، وأبطلوها بما لم يبطلها به الله تعالى ولا رسوله صلى الله عليه وسلم من وقوف الإمام في موضع أرفع من المأمومين، ومن اختلاف نية الإمام والمأموم. ثم فعلوا مثل ذلك في الصيام، فلم يبطلوه بما

[79] **Translator's note (L2861):** "مناحلهم" ordinarily means "their sieves" here, but its association with work on date palms is awkward and may reflect a transcription error. The supplied wording is retained. The Quranic quotation continues in the next unit; "by" anticipates its opening "a predatory beast."

[80] **Translator's note (L2862):** "ألا يوجب القراءة" has an irregular extra interrogative or connective form in this construction. The translation follows the surrounding argument, which presents the claim that the wording does not make recitation obligatory; the transcription is not silently treated as regular.

[81] **Qur'an references (L2860):** Qur'an 5:106 (Al-Ma'idah); Qur'an 5:3 (Al-Ma'idah).

manded to perform; he has merely done something other than what he was commanded. What is deficient is other than what is complete. He ﷺ said, "Whoever performs an act that does not accord with our command, it is rejected." Nor is this alone sufficient with respect to establishing prayer and completing fasting: everything additional brought by the revealed law must always be joined to this. It is an extraordinary wonder that some people did not invalidate prayer on the grounds on which he ﷺ invalidated it: failure to recite the Mother of the Quran, failure to position the limbs properly in bowing and prostration, and disorder in the rows. Yet they invalidated it on grounds on which neither Allah Most High nor His Messenger ﷺ invalidated it: the prayer leader's standing in a place higher than those following him, and a difference between the intention of the prayer leader and that of the follower. Then they did the same with fasting. They did not invalidate it on the grounds on which Allah Most High invalidated it: the absence of an intention each night, backbiting, and lying. Then they invalidated it on grounds on which Allah Most High did not invalidate it: eating forgetfully, an enema, and applying medicinal substances as eye cosmetics. Thus they have overturned the religion, as you see, prohibited what is lawful, and permitted what is unlawful. We seek refuge in Allah Most High from abandonment, and Him we ask for success. There is no deity but Him. Abu Muhammed said: We say the same concerning the report of Abu Dharr—may Allah be pleased with him—about what interrupts prayer. He mentioned the black dog, and that he asked the Prophet ﷺ, "What distinguishes the black from the red, from the yellow, from the white?" He ﷺ replied, "The black dog is a devil." This report does not state either that other dogs do not interrupt prayer or that they do interrupt it. Thus, when Abu Hurayrah's report from the Prophet ﷺ was transmitted, "A woman, a donkey, and a dog interrupt prayer," this was a general statement encompassing every dog. This is the position of Anas, Ibn Abbas, and others.[8283]

أبطله به الله تعالى، من عدم النية في كل ليلة، ومن الغيبة والكذب، ثم أبطلوه بما لم يبطله به الله تعالى، من الأكل ناسيا، ومن الحقنة، ومن الكحل بالعقاقير، فقلبوا الديانة كما ترى، وحرموا الحلال، وأحلوا الحرام وبالله تعالى نعوذ من الخذلان، وإياه نسأل التوفيق، لا إله إلا هو. قال أبو محمد: وكذلك نقول في حديث أبي ذر رضي الله عنه فيما يقطع الصلاة فذكر الكلب الأسود وأنه سأل النبي صلى الله عليه وسلم ما بال الأسود من الأحمر من الأصفر من الأبيض فقال صلى الله عليه وسلم الكلب الأسود شيطان فليس في هذا الحديث أن سائر الكلاب لا تقطع الصلاة ولا أنها تقطع فلما ورد حديث أبي هريرة عن النبي صلى الله عليه وسلم تقطع الصلاة المرأة والحمار والكلب كان هذا عموما لكل كلب، وهو قول أنس وابن عباس وغيرهما.

[82] **Translator's note (L2866):** The fasting quotation reads لن يبيته, with the future negation "will not," rather than the expected past negation لم يبيته. This has been retained in the translation. Resolving upon the fast is the intended sense of يبيته.

[83] **Translator's note (L2868):** The question uses a repeated "from" in listing the dogs' colors; this awkward construction has been preserved across the segment boundary.

L2869–2870 Those among the Shafiʿis and Malikis who object to us on this point should reflect on their position concerning the Prophet's statement ﷺ, "And whoever takes a man as his patron without the permission of his patrons." They must consequently permit him to take someone other than his patrons as his patron with their permission. This is the position of Ata and others, yet they reject it. There are many such instances of their inconsistency.

Section on Refuting Their Claim Concerning Implication from the Wording

Abu Muhammed said: What is understood from the wording is that, when emphasis occurs, it removes contentious objections and rules out the supposition of anyone who supposes that the statement does not retain its general scope. Some people have gone astray concerning His statement Most High, "So the angels prostrated, all of them, altogether," saying that the bearers of the Throne and those absent from that scene did not prostrate. Abu Muhammed said: Sufficient to refute this madness is His statement Most High, "I did not make them witnesses to the creation of the heavens and the earth, nor to their own creation, and I would not take those who lead astray as helpers." I would dearly like to know on what grounds they deemed it permissible to say that any of the angels did not prostrate, despite His statement Most High, "So the angels prostrated, all of them, altogether, except Iblis: he refused to be among those who prostrated." Such audacity gives grounds for suspecting the beliefs of the person who utters it, since it amounts to nothing but rejecting the statement of Allah Most High by means of the dead. Some Shafiʿis have attempted to construe the statement of Allah Most High, "In it are clear signs, the standing place of Abraham; whoever enters it is safe. Pilgrimage to the House is owed to Allah by mankind, by whoever is able to find a way to it. Whoever disbelieves—Allah has no need of the worlds," after His statement Most High, "In it are clear signs, the standing place of Abraham; whoever enters it is safe. Pilgrimage to the House is owed to Allah by mankind, by whoever is able to find a way to it. Whoever disbelieves—Allah has no need of the worlds," "whoever is able to it," as meaning that this is neither an explanation of those upon whom pilgrimage has been made obligatory nor in agreement with His statement Most High, "Allah does not burden a soul beyond its capacity. It shall have what it has earned, and

ومن أنكر هذا علينا من الشافعيين والمالكيين فليتفكروا في قولهم في قول النبي صلى الله عليه وسلم ومن تولى رجلا بغير إذن مواليه فيلزمهم أن يبيحوا له تولي غير مواليه بإذنهم وهذا قول عطاء وغيره وهم يأبون ذلك ومثل هذا من تناقضهم كثير فصل في إبطال دعواهم في دليل الخطاب قال أبو محمد والمفهوم من الخطاب هو أن التأكيد إذا ورد فإنه رفع للشغب وحسم لظن من ظن أن الكلام ليس على عمومه وقد ضل قوم في قوله تعالى {فسجد لملائكة كلهم أجمعون} فقالوا إن حملة العرش ومن غاب عن ذلك المشهد لم يسجد. قال أبو محمد: ويكفي من إبطال هذا الجنون قوله تعالى {ما أشهدتهم خلق لسماوات ولأرض ولا خلق أنفسهم وما كنت متخذ لمضلين عضدا} فليت شعري من أين استحلوا أن يقولوا إن أحدا من الملائكة لم يسجد مع قوله تعالى {فسجد لملائكة كلهم أجمعون * إلا إبليس أبى أن يكون مع لساجدين} ومثل هذا من الإقدام يسيء الظن بمعتقد قائله، إذ ليس فيه إلا رد قول الله تعالى بالميت. وقد رام بعض الشافعيين أن يجعل قول الله تعالى: {فيه آيات بينات مقام إبراهيم ومن دخله كان آمنا ولله على لناس حج لبيت من ستطاع إليه سبيلا ومن كفر فإن لله غني عن لعالمين} بعد قوله تعالى {فيه آيات بينات مقام إبراهيم ومن دخله كان آمنا ولله على لناس حج لبيت من ستطاع إليه سبيلا ومن كفر فإن لله غني عن لعالمين} من استطاع إليه على معنى أن ذلك ليس بيانا للذين ألزموا الحج ولا على أنه موافق لقوله تعالى {لا يكلف لله نفسا إلا وسعها لها ما كسبت وعليها ما كتسبت ربنا لا تؤاخذنا إن نسينآ 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} وقال إن هذا خطاب فائدة أخرى موجب أن الاستطاعة من غير قوة.

against it shall be what it has acquired. Our Lord, do not take us to task if we forget or err. Our Lord, and do not lay upon us a burden as You laid upon those before us. Our Lord, and 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." And he said that this is an address conveying another import, entailing that ability exists without strength.[848586]

L2871–2876 Abu Muhammed said: We do not reject the possibility that ability may also be something other than bodily strength. Rather, we say that ability comprises everything that provides a means to performing pilgrimage: provisions, a riding mount, and bodily strength. We do not say, as the Malikis have said, that ability is bodily strength alone, and that someone who lacks it but can afford provisions and a riding mount is unable. Nor do we say, as the Shafiʿis have said, that ability is only—only provisions and a riding mount, and that bodily strength is not ability. Rather, we say that bodily strength without a mount constitutes ability, and that provisions and a mount constitute ability: even if their possessor has paralyzed legs, incapacitated hands, and is blind, he is able by virtue of his wealth. This applies the verse in its generality, with the statement of Allah Most High and the hadith of the Prophet ﷺ also attesting to the correctness of our position—meaning the hadith of the woman of Khathʿam and His statement, Most High: {And proclaim the pilgrimage

قال أبو محمد: ولسنا نأبى أن تكون الاستطاعة أيضا شيئا غير القوة للجسم، لكننا نقول: إن الاستطاعة كل ما كان سببا إلى تأدية الحج، من زاد وراحلة وقوة جسم، ولا نقول كما قال المالكيون: إن الاستطاعة هي قوة الجسم فقط، وإن من عدمها وقدر على زاد وراحلة فهو غير مستطيع، ولا كما قال الشافعيون: إنما الاستطاعة إنما هي الزاد والراحلة فقط، وأن قوة الجسم ليست استطاعة، بل نقول: إن قوة الجسم دون الراحلة استطاعة، وإن الزاد والراحلة وإن كان واجدهما مقعد الرجلين مبطل اليدين أعمى، أنه مستطيع بماله، حملا للآية على عمومها مع شهادة قول الله تعالى وحديث النبي صلى الله عليه وسلم لصحة قولنا يعني حديث الخثعمية وقوله تعالى {وأذن في لناس بلحج يأتوك رجالا وعلى كل ضامر يأتين من كل فج عميق} قال أبو محمد وقد ذكرنا فيما خلا أن النبي صلى الله عليه وسلم إذا سئل عن شيء فأجاب أن ذلك الجواب محمول على عموم لفظه لا على ما سئل عنه صلى الله عليه وسلم فقط لأنه صلى الله عليه وسلم إنما بعث معلما فلا فرق بين ابتدائه بأمر وتعليم، وبين جوابه عما سئل، ومخبرا أيضا عما لم يسأل عنه فإن قال قائل فاحملوا قوله صلى الله عليه وسلم الخراج بالضمان على عمومه فاجعلوا الخراج للغاصب بضمانه، قيل له وبالله تعالى التوفيق: الحديث في ذلك لا يقوم بمثله حجة، لأنه عن مخلد بن خفاف، وعن مسلم بن خالد الزنجي وكلاهما ليس قويا في الحديث، وأيضا فلو صح لمنع من حمله على الغاصب قوله صلى الله عليه

[84] **Translator's note (L2869):** "Implication from the wording" renders دليل الخطاب, the technical doctrine of inferring a contrary ruling for an unmentioned case from a qualification in the wording. The reading بالميت literally means "by means of the dead" or "by means of the dead person." It is anomalous here and may be corrupt; it has not been silently replaced. The pilgrimage verse is quoted in full twice in the supplied text, followed by the fragment من استطاع إليه, "whoever is able to it." The repetition and disrupted syntax have been retained. The Quran quotations contain several defective spellings, chiefly missing initial alifs. Where these leave the intended words unambiguous, their meanings have been translated.

[85] **Translator's note (L2870):** The phrase خطاب فائدة أخرى موجب is syntactically awkward as transmitted. The translation follows its apparent sense: that the wording conveys an additional import, namely ability without strength.

[86] **Qur'an references (L2869):** Qur'an 18:51 (Al-Kahf); Qur'an 15:31 (Al-Hijr); Qur'an 3:97 (Ali 'Imran); Qur'an 2:286 (Al-Baqarah).

among the people: they will come to you on foot and on every lean mount; they will come from every distant mountain pass.}

Abu Muhammed said: We have previously mentioned that when the Prophet ﷺ was asked about something and answered, that answer is understood according to the generality of its wording, rather than being confined to what he ﷺ was asked about. For he ﷺ was sent only as a teacher, and there is no difference between his initiating a command and instruction and his answering what he was asked, while also giving information about what he had not been asked.

If someone says, "Then apply his saying ﷺ, 'Revenue goes with liability,' in its generality, and assign the revenue to the usurper because he bears liability," he is told—and success comes through Allah Most High: The hadith on this matter is not of a kind that can establish a proof, for it is transmitted through Makhlad ibn Khufaf and through Muslim ibn Khalid al-Zanji, neither of whom is strong in hadith transmission. Moreover, even if it were sound, applying it to the usurper would be precluded by his saying ﷺ, through an acceptable transmission route: "No wrongful root has any right." ʿAbd Allah ibn Rabiʿ al-Tamimi related to us, from Muhammed ibn Ishaq, from Ibn al-Aʿrabi, from Sulayman ibn al-Ashʿath: Muhammed ibn al-Muthanna related to us: ʿAbd al-Wahhab—that is, al-Thaqafi—related to us: Ayyub—that is, al-Sakhtiyani—related to us, from Hisham ibn ʿUrwah, from his father, from Saʿid ibn Zayd, from the Messenger of Allah ﷺ.

Abu Muhammed said: This hadith thus singled out wrongdoers from the entire class of those bearing liability, and denied the revenue to the purchaser who purchases rightfully. Moreover, His statement, Most High, {And do not consume your wealth among yourselves wrongfully, and offer it to the judges so that you may sinfully consume a portion of other people's wealth while you know}, precludes consuming any wealth without right whatsoever. Success comes through Allah Most High.

He ﷺ commanded clarification, and all his wording, whether an answer or otherwise, is therefore understood in its generality. If, however, the answer conveys no generality extending beyond what he was asked about, it is then

وسلم من الطريق المرضية ليس لعرق ظالم حق حدثنا عبد الله بن ربيع التيمي، عن محمد بن إسحاق، عن ابن الأعرابي، عن سليمان بن الأشعث، حدثنا محمد بن المثنى، حدثنا عبد الوهاب، هو الثقفي، حدثنا أيوب، هو السختياني، عن هشام بن عروة عن أبيه عن سعيد بن زيد عن رسول الله صلى الله عليه وسلم قال أبو محمد نخص هذا الحديث الظالمين من جملة الضامنين، فنفى الخراج للمشتري بحق، وأيضا فقوله تعالى {ولا تأكلوا أموالكم بينكم بلباطل وتدلوا بها إلى لحكام لتأكلوا فريقا من أموال لناس بلإثم وأنتم تعلمون} مانع من أكل مال بغير حق جملة وبالله تعالى التوفيق وقد أمر صلى الله عليه وسلم بالبيان فلفظه كله جوابا كان أو غير جواب، محمول على عمومه، فإن لم يعط الجواب عموما غير ما سئل عنه لم يحمل على ما سواه حينئذ كما أفتى صلى الله عليه وسلم الواطىء في رمضان بالكفارة فوجب ألا يجعل على غير الواطىء لأنه ليس في لفظه صلى الله عليه وسلم ما يوجب مشاركة غير الواطىء للواطىء في ذلك وكذلك أمره صلى الله عليه وسلم لمن أساء الصلاة أو صلى خلف الصفوف منفردا بالإعادة، أمر لمن فعل مثل ذلك الفعل وحكم في ذلك الفعل متى وجد وأمره صلى الله عليه وسلم بغسل المحرم أمر في كل ميت في حال إحرام وذكر صلى الله عليه وسلم أو ذكر ربه تعالى المسجد الحرام حكما في المسجد الحرام أنه لا يشركه فيه غيره، لأنه ليس ههنا مسجد حرام غيره، وليس لكل لفظ إلا مقتضاه ومفهومه فقط وكذلك قوله صلى الله عليه وسلم الأئمة من قريش حكم في قريش لا يشاركهم فيه غيرهم، ولا يقتصر به على بعضهم دون بعض، إلا من منع منه إجماع، من امرأة أو مجنون أو من لم يبلغ، وكذلك حب الأنصار فضل في جميع الأنصار لا يعدوهم إلى غيرهم، ولا يقتصر به على بعضهم دون بعض. وكذلك ذو القربى وكذلك فضل أبي بكر لا يشركه فيه غيره، وكذلك فضل علي لا يشركه فيه غيره، لأن الحكم على الأسماء، فكل اسم

not applied to anything else. Thus, when he ﷺ gave the man who had intercourse during Ramadan a ruling requiring expiation, it followed that it must not be imposed upon someone other than the person who had intercourse, because nothing in his wording ﷺ requires someone who did not have intercourse to share that ruling with the person who did. Likewise, his command ﷺ to someone who performed the prayer badly, or prayed alone behind the rows, to repeat it is a command addressed to anyone who performs that same act, and a ruling concerning that act whenever it occurs. His command ﷺ to wash the person in the state of pilgrimage consecration is a command concerning everyone who dies while in that state. His mention ﷺ, or the mention by his Lord Most High, of the Sacred Mosque constitutes a ruling concerning the Sacred Mosque in which no other mosque shares, because there is no other Sacred Mosque here. Every expression has only what it entails and signifies. Likewise, his saying ﷺ, "The leaders are from Quraysh," is a ruling concerning Quraysh in which others do not share; nor is it confined to some of them to the exclusion of others, except those excluded by consensus, such as a woman, an insane person, or someone who has not reached puberty Likewise, love of the Helpers is a merit pertaining to all the Helpers: it does not extend beyond them to others, nor is it confined to some of them to the exclusion of others. The same applies to the near relative. Likewise, no one else shares in Abu Bakr's merit, and no one else shares in ʿAli's merit. For rulings attach to names: each name has its named referent, and it is not extended beyond that referent to another, nor is another substituted for it, nor is it confined to some of what it names

مسماه لا يعدي به إلى غيره، ولا يبدل منه غيره، ولا يقتصر به على بعض مسماه دون بعض ولا في الأحوال دون بعض

to the exclusion of the rest, or to some circumstances to the exclusion of others.[87][88][89][90]

L2877 **[Section on Refuting Their Claim Concerning Inference from Contrary Implication][91]**

L2878–2882 Abu Muhammed said: Through the power of our Creator Most High, rather than our own power, we have fully discussed everything with which they have raised contentious objections, and have explained the resolution of all their doubts. We shall now present the demonstrations that invalidate their claim on this matter, if Allah, Mighty and Majestic, wills. There is neither power nor strength except through Allah, the Most High, the Magnificent.

They are asked: Consider the statement of Allah, Mighty and Majestic, {And do not approach the orphan's property except in the manner that is best, until he reaches his maturity; and give full measure and weight with equity. We burden no soul beyond its capacity. And when you speak, be just, even if it concerns a near relative; and fulfill the covenant of Allah. This He has enjoined upon you, so that you may take heed.} Does it contain permission to approach the property of someone who is not an orphan in a manner other than that which is best? If they say, "No, it contains no permission for that," they have abandoned their corrupt assertion that mentioning freely

[87] **Translator's note (L2871):** The repeated restriction إنما ... إنما in the statement attributed to the Shafi'is has been retained as "only—only."

[88] **Translator's note (L2872):** The opening construction concerning provisions, a mount, and their possessor is syntactically awkward; the translation preserves its argument that financial means can constitute ability despite bodily incapacity.

[89] **Translator's note (L2873):** "No wrongful root has any right" is a literal rendering of a legal expression concerning planting or establishment on another person's land without right. The supplied text says that the hadith "denied the revenue to the purchaser who purchases rightfully." This conflicts with the surrounding argument, which concerns excluding wrongful possessors from entitlement to revenue. The wording has been preserved without correction.

[90] **Qur'an references (L2871):** Qur'an 22:27 (Al-Hajj).

[91] **Translator's note (L2877):** "Inference from contrary implication" renders dalil al-khitab: inferring that cases not covered by an expressly stated qualification have the opposite ruling.

[فصل في إبطال دعواهم في دليل الخطاب]

قال أبو محمد قد أوعينا بحول خالقنا تعالى لا بحولنا، الكلام في كل ما شغبوا به، وأبنا حل شكوكهم جملة، ثم نأتي بالبراهين المبطلة لدعواهم في ذلك إن شاء الله عز وجل، ولا حول ولا قوة إلا بالله العلي العظيم. يقال لهم أرأيتم قول الله عز وجل {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} فيه إباحة أن يقرب مال من ليس يتيما بغير التي هي أحسن؟ فإن قالوا: لا، ما فيه إباحة لذلك تركوا قولهم الفاسد إن ذكر السائمة دليل على أن غير السائمة بخلاف السائمة ولا فرق بين ذكره صلى الله عليه وسلم السائمة في موضع والغنم جملة في موضع آخر، وبين قوله تعالى {ولا تأكلوا أموالكم بينكم بلباطل وتدلوا بها إلى لحكام لتأكلوا فريقا من أموال لناس بلإثم وأنتم تعلمون} في مكان ثم قال في آخر {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} وكذلك لا فرق بين من قال: إن الحديث الذي فيه ذكر السائمة بيان للحديث الذي فيه ذكر الغنم جملة، وبين من قال: إن ذكر مال اليتيم في الآية بيان للأحوال المحرمة، ويعلم أن المراد بها مال اليتيم خاصة ويقال لهم أترون قول الله تعالى {إن عدة لشهور عند لله ثنا عشر شهرا في كتاب لله يوم خلق لسماوات ولأرض منها أربعة حرم ذلك الدين القيم فلا تظلموا فيهن أنفسكم وقاتلوا لمشركين كآفة كما يقاتلونكم

grazing livestock is evidence that livestock which do not graze freely have a different ruling. There is no difference between his mentioning ﷺ freely grazing livestock in one place and sheep collectively in another place, and His saying, Most High, {And do not consume your wealth among yourselves wrongfully, and offer it to the judges so that you may sinfully consume a portion of other people's wealth while you know}, in one place, and then saying in another, {And do not approach the orphan's property except in the manner that is best, until he reaches his maturity; and give full measure and weight with equity. We burden no soul beyond its capacity. And when you speak, be just, even if it concerns a near relative; and fulfill the covenant of Allah. This He has enjoined upon you, so that you may take heed.} Likewise, there is no difference between someone who says that the hadith mentioning freely grazing livestock clarifies the hadith mentioning sheep collectively, and someone who says that the mention of the orphan's property in the verse clarifies the forbidden circumstances, and that it is thereby known that what is intended is specifically the orphan's property.

They are also asked: Do you consider His statement, Most High, {Indeed, the number of months with Allah is twelve months, in Allah's Book, on the day He created the heavens and the earth; of them four are sacred. That is the upright religion, so do not wrong yourselves during them; and fight the polytheists all together, just as they fight you all together, and know that Allah is with those who are mindful of Him}, to permit wrongdoing during the remaining months that are not sacred? Or do you consider His statement, Most High, {Sovereignty that day belongs to Allah; He will judge between them. Those who have believed and done righteous deeds will be in Gardens of Bliss}, to preclude sovereignty belonging to Allah at any time other than that day?

Likewise, His statement, Most High, {And let those who find no means to marry remain chaste until Allah enriches them from His bounty. And those among those whom your right hands possess who seek a contract of emancipation—make such a contract with them if you know good in them, and give them from the wealth of Allah which He has given you. And do not compel your slave girls to prostitution, if they desire chastity, seeking the

كآفة وعلموا أن الله مع لمتقين} مبيحا للظلم في سائر الأشهر غير الحرم أو ترون قوله تعالى {لملك يومئذ لله يحكم بينهم فلذين آمنوا وعملوا لصالحات في جنات لنعيم} مانعا من أن يكون الملك في غير يومئذ لله وكذلك قوله تعالى {وليستعفف لذين لا يجدون نكاحا حتى يغنيهم لله من فضله ولذين يبتغون لكتاب مما ملكت أيمانكم فكاتبوهم إن علمتم فيهم خيرا وآتوهم من مال لله لذي آتاكم ولا تكرهوا فتياتكم على لبغآء إن أردن تحصنا لتبتغوا عرض لحياة لدنيا ومن يكرههن فإن لله من بعد إكراههن غفور رحيم} أتراه مبيحا للبغاء إن لم يردن تحصنا. وكذلك قوله تعالى {ولا جناح عليكم فيما عرضتم به من خطبة لنسآء أو أكننتم في أنفسكم علم لله أنكم ستذكرونهن ولكن لا تواعدوهن سرا إلا أن تقولوا قولا معروفا ولا تعزموا عقدة لنكاح حتى يبلغ لكتاب أجله وعلموا أن لله يعلم ما في أنفسكم فحذروه وعلموا أن لله غفور حليم} أتراه مبيحا لمواعدتهن في العدة جهرا وكذلك قوله تعالى {لعن لذين كفروا من بني إسرائيل على لسان داوود وعيسى بن مريم ذلك بما عصوا وكانوا يعتدون} أتراه مانعا من لعن من كفر من غير بني إسرائيل وكذلك قوله تعالى {أحل لكم صيد لبحر وطعامه متاعا لكم وللسيارة وحرم عليكم صيد لبر ما دمتم حرما وتقوا لله لذي إليه تحشرون} أتراه مانعا من أكل الثمار والحبوب وما ليس من صيد البحر ولا طعامه كما قال المالكيون إن قوله تعالى {ولخيل ولبغال ولحمير لتركبوها وزينة ويخلق ما لا تعلمون} مانع من أكل الخيل إذ لم يذكر الأكل، وإذا عارضوا بهذه الآية الحديث الذي فيه إباحة للخيل فهلا عارضوا بالآية التي ذكرنا إباحة كل ما اختلف فيه فحرموه بها ويقال لهم أترون قوله صلى الله عليه وسلم أمرت أن أقاتل الناس حتى يقولوا لا إله إلا الله، فإذا قالوها عصموا مني دماءهم وأموالهم إلا بحقها مسقطا لقتلهم إن جحدوا نبوة موسى وعيسى عليهما السلام؟.

goods of the life of this world. And whoever compels them—then Allah, after their compulsion, is Forgiving, Merciful.} Do you consider it to permit prostitution if they do not desire chastity?

Likewise, His statement, Most High, {And there is no blame upon you for what you intimate of a proposal of marriage to women, or conceal within yourselves. Allah knows that you will mention them, but do not make promises to them secretly, except that you speak an honorable word. And do not resolve upon the marriage bond until the prescribed term reaches its end. And know that Allah knows what is within yourselves, so beware of Him; and know that Allah is Forgiving, Forbearing.} Do you consider it to permit making promises to them openly during the waiting period?

Likewise, His statement, Most High, {Those who disbelieved among the Children of Israel were cursed upon the tongue of David and Jesus son of Mary. That was because they disobeyed and used to transgress.} Do you consider it to preclude cursing disbelievers who are not among the Children of Israel?

Likewise, His statement, Most High, {Lawful for you is the game of the sea and its food, as provision for you and for travelers; and forbidden to you is the game of the land for as long as you are in pilgrimage consecration. And be mindful of Allah, to whom you will be gathered.} Do you consider it to preclude eating fruits, grains, and anything that is neither the game of the sea nor its food, just as the Malikis said that His statement, Most High, {And horses, mules, and donkeys, for you to ride and as an adornment; and He creates what you do not know}, precludes eating horses, since He did not mention eating? And if they oppose the hadith permitting horses with this verse, why do they not oppose the permissibility of everything about which there is disagreement with the verse we have mentioned, and thus declare it forbidden on its basis?

They are also asked: Do you consider his saying ﷺ, "I have been commanded to fight the people until they say, 'There is no god but Allah.' When they say it, they protect their blood and their property from me, except as required by its

right," to remove the grounds for killing them if they deny the prophethood of Moses and Jesus, peace be upon them both?[92][93][94]

L2883–2884 They should be told: If your assertion were true—that when something is attached to a particular attribute, this indicates that whatever falls outside it has the opposite ruling—then someone's statement, "Zayd died," would be false, because, according to their judgment, it would necessarily mean that no one other than Zayd had died. The same applies to "Zayd is a writer," and likewise to "Muhammed is the Messenger of Allah ﷺ," if that necessarily means that no one other than him is a messenger of Allah. Furthermore, given the position we have mentioned, they must permit killing children for reasons other than poverty, because Allah Most High said only: {And do not kill your children for fear of poverty. We provide for them and for you. Surely killing them is a great sin.} Likewise, concerning His saying, Most High, {And believe in what I have sent down, confirming what is with you, and do not be the first to disbelieve in it, and do not purchase a small price with My signs, and fear Me alone}, they must hold that this permits purchasing a large price with them. Thus, since they abandoned their doctrine in everything we have mentioned, and since someone's statements, "Zayd died," "Zayd is a writer," "Muhammed is the Messenger of Allah ﷺ," and "Musaylimah is a liar," are true, without this precluding that someone other than Zayd has died, that many people other than Zayd are writers, that Moses, Jesus, and Abraham are messengers of Allah, and that al-Aswad al-ʿAnsi, al-Mughirah al-Jallah, and Banata are liars, the assertion of these people is invalid: that when an address refers to a particular attribute, a particular named subject, or a particular time, whatever falls outside it has the opposite ruling. Let no one who hears these words of ours misunderstand us and suppose that, because we reject their assertion that what is unmentioned has a ruling contrary to what

ويقال لهم: لو كان قولكم حقا إن الشيء إذا علق بصفة ما، دل على أن ما عداه بخلافه، لكان قول القائل: مات زيد كذبا، لأنه كان يوجب على حكمهم أن غير زيد لم يمت وكذلك زيد كاتب وكذلك محمد رسول الله صلى الله عليه وسلم إذا كان ذلك يوجب ألا يكون غيره رسول الله، ويلزمهم أيضا، إذ قالوا بما ذكرنا، أن يبيحوا قتل الأولاد لغير الإملاق، لأن الله تعالى إنما قال: {ولا تقتلوا أولادكم خشية إملاق نحن نرزقهم وإياكم إن قتلهم كان خطئا كبيرا} ويلزمهم في قوله تعالى: {وآمنوا بما أنزلت مصدقا لما معكم ولا تكونوا أول كافر به ولا تشتروا بآياتي ثمنا قليلا وإياي فتقون} إن ذلك مبيح لأن يشترى بها ثمن كثير فلما تركوا مذهبهم في كل ما ذكرنا وكان قول القائل مات زيد وزيد كاتب ومحمد رسول الله صلى الله عليه وسلم ومسيلمة كذاب حقا ولم يكن في ذلك منع من أن غير زيد قد مات، وأن غير زيد كتاب كثير، وأن موسى وعيسى وإبراهيم رسل الله، وأن الأسود العنسي والمغيرة الجلاح وبناتا كذابون، بطل قول هؤلاء القوم إن الخطاب إذا ورد بصفة ما وفي اسم ما أو في زمان ما أن ما عداه بخلاف. ولا يغلط علينا من سمع كلامنا هذا، فيظن أننا إذ أنكرنا قولهم: إن غير المذكور بخلاف المذكور، إننا نقول: إن غير المذكور موافق للمذكور، بل كلا الأمرين عندنا خطأ فاحش، وبدعة عظيمة، وافتراء بغير هدى. ولكنا نقول: إن الخطاب لا يفهم منه إلا ما قضي لفظه فقط، وأن لكل قضية حكم اسمها فقط، وما عداه فغير محكوم له، لا بوفاقها ولا بخلافها لكنا نطلب دليل ما عداها من نص وارد اسمه، وحكم مسموع فيه، أو من إجماع ولا بد من أحدهما وبالله تعالى التوفيق

[92] **Translator's note (L2880):** The supplied text reads "the forbidden circumstances" (al-ahwal al-muharramah). "The forbidden properties/wealth" (al-amwal al-muharramah) is a possible intended reading in context, but has not been substituted.

[93] **Hadith references (L2878):** Sunan an-Nasai 3093; Sunan an-Nasai 3975.

[94] **Qur'an references (L2878):** Qur'an 6:152 (Al-An'am); Qur'an 17:34 (Al-Isra); Qur'an 9:36 (At-Tawbah); Qur'an 24:33 (An-Nur); Qur'an 2:235 (Al-Baqarah); Qur'an 5:78 (Al-Ma'idah); Qur'an 5:96 (Al-Ma'idah); Qur'an 16:8 (An-Nahl).

is mentioned, we maintain that what is unmentioned has a ruling agreeing with what is mentioned. Rather, both positions are, in our view, a flagrant error, a grave innovation, and a fabrication without guidance. We maintain, however, that nothing is understood from an address except what its wording alone dictates, and that each proposition carries a ruling only for its named subject. Whatever falls outside it has no ruling established for it, either in agreement with that proposition or contrary to it. Instead, we seek evidence concerning what falls outside it from a text in which its name occurs and a ruling concerning it is transmitted, or from consensus. One of these two is indispensable. Through Allah Most High comes success.[95][96]

[Section on Their Great Self-Contradiction in This Matter]

L2885

L2886 Abu Muhammed said: In sum, their doctrine concerning analogy, their doctrine concerning the contrary implication of an address, and their doctrine concerning specific application are doctrines that invalidate and demolish one another. For concerning analogy they say: "When a particular ruling is expressly stated, we include what is not expressly mentioned under the ruling of what is expressly mentioned, and we make that for which there is no Sunnah follow the Sunnah. Thus, if it establishes the ruling of usury for wheat exchanged for wheat, we establish it for straw exchanged for straw; and if expiation is obligatory for someone who intentionally kills game, we make it obligatory for someone who does so by mistake."

L2887–2889 Concerning the contrary implication of an address, they say: "When a particular ruling is expressly stated, we exclude what is not expressly mentioned from the ruling of what is expressly mentioned, and we do not make that for which there is no Sunnah follow the Sunnah." Thus, groups among them said: "We do not levy zakat on livestock other than freely grazing livestock, because freely grazing livestock are mentioned in some hadiths." A group among them said: "We do not eat horses, because only riding and adornment are mentioned in the verse." And groups among them said: "We award

[95] **Translator's note (L2884):** The supplied text reads "al-Mughirah al-Jallah" and "Banata." These names are uncertain and have been retained rather than silently emended.

[96] **Qur'an references (L2883):** Qur'an 17:31 (Al-Isra); Qur'an 2:41 (Al-Baqarah).

[فصل في عظيم تناقضهم في هذا الباب]

قال أبو محمد وبالجملة فإن مذهبهم في القياس، ومذهبهم في دليل الخطاب ومذهبهم في الخصوص، مذاهب يبطل بعضها بعضا ويهدم بعضها بعضا، وذلك أنهم قالوا في القياس: إذا نص على حكم ما فنحن ندخل ما لا ينص عليه في حكم المنصوص عليه، ونتبع السنة ما لا سنة فيه، فإذا أوجب الربا في البر بالبر أوجبناه نحن في التبن بالتبن، وإذا وجبت الكفارة، على العامد في الصيد أوجبناه نحن على المخطىء،

وقالوا في دليل الخطاب: إذا نص على حكم ما فنحن نخرج ما لم ينص عليه من حكم المنصوص عليه، ولا نتبع السنة ما لا سنة فيه. فقالت طوائف منهم لا نزكي غير السائمة، لأنه ذكرت السائمة في بعض الأحاديث. وقالت طائفة منهم: لا نأكل الخيل، لأنه إنما ذكر في الآية الركوب والزينة. وقالت طوائف منهم: لا نقضي بالمتعة إلا التي طلقت ولم تمس ولا فرض لها لأن هذه قد ذكرت بصفتها في بعض الآيات. قال أبو محمد: وهذا ضد قولهم في القياس وإبطاله. وقالوا في الخصوص: لا نقضي لجميع ما اقتضاه النص، لكن نخرج منه بعض ما يقع عليه لفظ فقالوا في قوله تعالى {يستفتونك

a consolatory gift only to a woman who has been divorced without having been touched and without a bridal due having been fixed for her, because a woman with these attributes is mentioned in some verses." Abu Muhammed said: This is the opposite of their position concerning analogy and invalidates it. Concerning specific application, they say: "We do not apply the ruling to everything encompassed by the text; rather, we exclude from it some of what its wording covers." Thus, concerning His saying, Most High, {They ask you for a ruling. Say: Allah gives you a ruling concerning collateral inheritance. 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 siblings, men and women, the male shall have the share of two females. Allah makes clear to you lest you go astray, and Allah knows all things}, they said: "He meant only male children, to the exclusion of females." Concerning His saying, Most High, {Then, when they reach the end of their appointed term, retain them honorably or part with them honorably, and call to witness two just men from among you, and establish testimony for Allah. By this is admonished whoever believes in Allah and the Last Day. And whoever fears Allah, He will make a way out for him}, they said: "He meant only free men, not slaves, and unrelated persons, not brothers, fathers, sons, or spouses." And concerning His saying, Most High, {The sacred month for the sacred month, and sacred things are subject to retaliation. So whoever commits aggression against you, commit aggression against him to the same extent that he committed aggression against you; and fear Allah, and know that Allah is with those who fear Him}, and 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 wounds are subject to retaliation. But whoever forgoes it as charity, it is an expiation for him. And whoever does not judge by what Allah has sent down—it is they who are the wrongdoers}, they said: "There is no retaliation for a wound except a wound exposing the bone alone, nor is there retaliation against someone who destroys something, someone who slaps, or someone who plucks out hair." Abu Muhammed said: This is a doctrine that invalidates their position concerning analogy and the contrary implication of an address alike. We

قل لله 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 لله لكم أن تضلوا ولله بكل شيء عليم} إنما عنى الذكر من الأولاد دون الإناث. وقالوا في قوله تعالى: {فإذا بلغن أجلهن فأمسكوهن بمعروف أو فارقوهن بمعروف وأشهدوا ذوي عدل منكم وأقيموا لشهادة لله ذلكم يوعظ به من كان يؤمن بلله واليوم لآخر ومن يتق لله يجعل له مخرجا} إنما عنى من الأحرار لا من العبيد، ومن الأباعد لا من الإخوة والآباء والأبناء والأزواج وقالوا في قوله تعالى {لشهر لحرام بلشهر لحرام ولحرمات قصاص فمن عتدى عليكم فعتدوا عليه بمثل ما عتدى عليكم وتقوا لله وعلموا أن لله مع لمتقين} وفي 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} لا قصاص من جرح إلا من الموضحة فقط ولا قصاص من متلف ولا من لطم ولا من نتف شعر. قال أبو محمد: وهذا مذهب يبطل قولهم في القياس وفي دليل الخطاب معا ونحن نرى إن شاء الله تعالى تناقضهم في مذاهبهم هذه في مسألة واحدة. روى المالكيون حديث القطع في ربع دينار، فقالوا: لا يستباح فرج زوجة بأقل من ربع دينار، قياسا على ما يقطع فيه يد السارق، وذكر ربع الدينار في القطع موجب ألا يكون الصداق أقل منه، ثم قالوا: لا يقطع المستعير لأنه ليس سارقا، وذكر الله تعالى السارق موجب ألا يقطع من ليس سارقا. ثم قالوا: من سرق شيئا فأكله قبل أن يخرج من حرزه، وإن كان يساوي دنانير، فلا قطع عليه، فخصوا بالقطع بعض السراق دون بعض.

shall show, if Allah Most High wills, their self-contradiction in these doctrines of theirs within a single question. The Malikis transmitted the hadith concerning amputation for a quarter of a dinar, then said: "Sexual access to a wife may not be rendered lawful for less than a quarter of a dinar," by analogy with the amount for which a thief's hand is amputated. "And the mention of a quarter of a dinar in connection with amputation requires that the bridal due be no less than that." Then they said: "A borrower's hand is not amputated, because he is not a thief; and Allah Most High's mention of the thief requires that someone who is not a thief should not have his hand amputated." Then they said: "Whoever steals something and eats it before leaving the place where it is securely kept incurs no amputation, even if it is worth several dinars." Thus they restricted amputation to some thieves to the exclusion of others.[979899]

L2890–2891 The Hanafis did precisely the same, except that they said: "The hand of someone who steals meat, a copy of the Quran, fruit, or arsenic is not amputated." Muhammed ibn al-Mughirah al-Makhzumi transmitted from Malik that a vessel is washed seven times after a pig laps from it, by analogy with the hadith concerning a dog. Then they said: "Neither a garment nor a body is washed on account of a dog's saliva, because the hadith mentions only the vessel and does not mention anything else." Then Ibn al-Qasim transmitted from him that he said: "The vessel is not emptied unless it contains water; as for anything other than water, a dog's lapping does not harm it." As for the Shafiʿis, they turned to the verse concerning the declaration that a wife is as forbidden as one's mother, and reasoned by analogy concerning the mother and the sister. They said: "Allah Most High's mention of the mother is evidence that the sister is like her." Then they said: "Allah Most High's mention

وكذلك فعل الحنفيون سواء بسواء، إلا أنهم قالوا: لا يقطع سارق لحم ولا مصحف ولا فاكهة ولا زرنيخ. وروى محمد بن المغيرة المخزومي عن مالك: أن الإناء يغسل من ولوغ الخنزير سبعا، قياسا على الحديث الوارد في الكلب، ثم قالوا: لا يغسل من لعاب الكلب ثوب ولا جسد، لأنه إنما ذكر في الحديث الإناء ولم يذكر غيره، ثم روى ابن القاسم عنه أنه قال: لا يهرق الإناء إلا أن يكون فيه ماء وأما غير الماء فلا يضره ولوغ الكلب. وأما الشافعيون فأتوا إلى آية الظهار فقاسوا على الأم والأخت، وقالوا: ذكر الله تعالى الأم دليلا على أن الأخت مثلها، ثم قالوا: ذكر الله تعالى المظاهر دليلا على أن المرأة إذا ظاهرت من زوجها بخلاف ذلك، ثم قالوا: ومن ظاهر من أمته فلا كفارة عليه، فخصوا بعض النساء المذكورات في الآية بلا دليل، كل ذلك ومثل هذا في أقوالهم كثير، بل هو أكثر أقوالهم، وما سلم منها من التناقض إلا الأقل، وكلها يهدم بعضها بعضا، ويدل هذا دلالة قطع على أن أقوالهم من عند غير الله تعالى، إذا ما كان من عند الله تعالى فلا اختلاف فيه ولا تعارض وبعضه يصدق بعضا

[97] **Translator's note (L2887):** The Quranic quotations contain numerous omitted initial alifs and irregular word forms. Their identifiable wording is translated without treating those transcriptional spellings as different words.

[98] **Translator's note (L2889):** "A wound exposing the bone" renders the technical term al-mudihah. "Someone who destroys something" renders the unqualified mutlif; the supplied wording does not specify what is destroyed.

[99] **Qur'an references (L2887):** Qur'an 4:176 (An-Nisa); Qur'an 65:2 (At-Talaq); Qur'an 5:45 (Al-Ma'idah).

of the man making this declaration is evidence that the ruling differs when a woman makes such a declaration concerning her husband." Then they said: "Whoever makes such a declaration concerning his slave woman owes no expiation." Thus they singled out some of the women mentioned in the verse, all of this without evidence. Much of what they say is like this; indeed, it constitutes most of what they say. Only the smallest part of it is free of contradiction, and all these positions demolish one another. This indicates conclusively that their statements come from someone other than Allah Most High, since whatever comes from Allah Most High contains no contradiction within it, nor any conflict, and its parts confirm one another.[100]

L2892–2898 Section: Further Instances of Their Self-Contradiction in This Matter

Abu Muhammed said: Allah Most High expressly stipulated the obligation of blood money and expiation for killing a believer by mistake. The proponents of analogy then made it obligatory for killing a believer who is a protected non-Muslim by mistake, although he is not mentioned in the verse at all. Then they differed: one group made expiation obligatory for intentional killing by analogy with killing by mistake, while another group disallowed this. The self-contradiction of this latter group was greater, because they made expiation obligatory for someone who kills game by mistake by analogy with someone who kills it intentionally, while they disallowed expiation for killing a believer deliberately, and they did not draw an analogy between it and killing him by mistake. All this while every one of them hears the words of Allah Most High: {Call them after their fathers; that is more equitable before 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 that in which you have erred, but only for what your hearts have intended. Allah is ever forgiving, merciful}; and the words of the Messenger of Allah ﷺ: "My community has been relieved of mistakes, forgetfulness, and what they have

[100]**Translator's note (L2890):** The phrase describing their analogy literally reads "they reasoned by analogy on the mother and the sister." The subsequent explanation supplies the intended comparison but the phrasing itself is awkward. The technical term zihar denotes declaring one's wife sexually forbidden by likening her to a prohibited female relative, paradigmatically one's mother; its related forms are rendered here as "such a declaration."

فصل من تناقضهم في ذلك أيضا قال أبو محمد نص الله تعالى على إيجاب الدية والكفارة في قتل المؤمن خطأ، فأوجبها القياسيون في قتل المؤمن الذمي خطأ، ولا ذكر له في الآية أصلا، ثم اختلفوا: فطائفة أوجبت الكفارة في قتل العمد قياسا على قتل الخطأ، وطائفة منعت من ذلك، وكان تناقض هذه الطائفة أعظم، لأنهم أوجبوا الكفارة على قاتل الصيد خطأ: قياسا على قاتله عمدا، ومنعوا من الكفارة في قتل المؤمن عمدا، ولم يقيسوه على قتله خطأ هذا وكلهم يسمع قول الله تعالى {دعوهم لآبآئهم هو أقسط عند لله فإن لم تعلموا آباءهم فإخوانكم في لدين ومواليكم وليس عليكم جناح فيمآ أخطأتم به ولكن ما تعمدت قلوبكم وكان لله غفورا رحيما} وقول رسول الله صلى الله عليه وسلم رفع عن أمتي الخطأ والنسيان وما استكرهوا عليه فوجب بهذين النصين ألا يؤخذ أحد بخطأ من فعله، إلا ما جاء به النص من إيجاب الكفارة على المخطىء في قتل المؤمن، وما أجمعت الأمة عليه من ضمان الخطأ في إتلاف الأموال، وأن الوضوء ينتقض بالأحداث الخارجة من المخرجين بالنسيان كالعمد فقط. ومن تناقضهم أن قالت طوائف منهم في قول النبي صلى الله عليه وسلم من باع نخلا وفيها تمر قد أبر فهو للبائع إلا أن يشترط المبتاع فقال بعضهم: إذا ظهر، أبر أو لم يؤبر، فهو للبائع، وهذا قول أبي حنيفة، وقد كثر تناقض أصحابه في دليل الخطاب جدا. وقالت

been compelled to do." These two texts therefore make it obligatory that no one be held accountable for an act he has committed by mistake, except where a text requires expiation from someone who kills a believer by mistake, and except for what the community has unanimously agreed upon: liability for property destroyed by mistake, and that ritual ablution is invalidated by discharges emerging from the two bodily outlets through forgetfulness just as it is by deliberate discharges—these exceptions alone.

Among their contradictions is that certain groups of them, concerning the Prophet's ﷺ statement, "Whoever sells date palms bearing fruit that has been pollinated, it belongs to the seller unless the purchaser stipulates otherwise," said: "Once it has appeared, whether it has been pollinated or not, it belongs to the seller." This is Abu Hanifah's position, and his followers' contradictions concerning inference from the contrary implication of an utterance have become exceedingly numerous.

Certain groups of them said: "The slave to be freed for a declaration of prohibited marital resemblance must be a believer, because the slave mentioned in the expiation for killing can only be a believer. Thus the slave whose religion is left unmentioned in the case of prohibited marital resemblance must be like the slave whose religion is specified in the case of killing." Then some of this group said: "Since he ﷺ mentioned two large jars in his statement, 'When water reaches two large jars, it does not bear impurity,' water amounting to less than two large jars must have a different ruling from two large jars." Abu Muhammed said: Why, then, did they not say the same concerning the slave, and require that the slave about whose religion nothing is said have a different ruling from the slave whose religion is specified, just as they gave what is left unmentioned concerning water below two large jars a different ruling from the expressly mentioned two large jars? Or why did they not make the unmentioned case of water below two large jars like two large jars, just as they made the slave whose religion is left unmentioned in the case of prohibited marital resemblance like the slave whose religion is specified in the case of killing? Another group of them said: "The person praying behind an imam does not say, 'Allah hears whoever praises Him,' because that is not mentioned in some of the reports; nor does the imam say

طوائف منهم: واجب أن تكون الرقبة في الظهار إلا مؤمنة، لأن الرقبة التي ذكرت في كفارة القتل لا تكون إلا مؤمنة، فوجب أن تكون الرقبة المسكوت عن ذكر دينها في الظهار مثل الرقبة المذكور دينها في القتل ثم قال بعض هذه الطائفة لما ذكر صلى الله عليه وسلم القلتين في قوله إذا بلغ الماء قلتين لم يحمل خبثا وجب أن يكون لها ما دون القلتين بخلاف القلتين. قال أبو محمد: فهلا قالوا في الرقبة كذلك، وأوجبوا أن يكون المسكوت عنها بخلاف المذكور دينها، كما جعلوا المسكوت عنه فيما دون القلتين بخلاف المذكور من القلتين؟ أو هلا جعلوا المسكوت عنه مما دون القلتين مثل القلتين، كما جعلوا المسكوت عن دينها في الظهار مثل المذكور دينها في القتل؟. وقالت طائفة أخرى منهم: لا يقول المأموم: سمع الله لمن حمده، لأن ذلك لم يذكر في بعض الأحاديث، ولا يقول الإمام: آمين، لأنه لم يذكر ذلك في بعض الأحاديث، وإن كان قد ذكر في غيرها، لكن يغلب المسكوت ههنا، فلا نقول إلا ما جاء في كلا الحديثين ذكره. ثم قالت: الجزية من غير أهل الكتاب، وإن كان الله تعالى لم يأمر بأخذها إلا من أهل الكتاب، وادعوا ذلك على عثمان رضي الله عنه. قال أبو محمد: وهذا لا يصح عن عثمان أصلا، وأول من أخذ الجزية من غير أهل الكتاب، فالقاسم بن محمد الثقفي قائد الفاسق الحجاج أخذها من عباد البد من كفرة أهل السند، وأما عثمان رضي الله عنه فلم يتجاوز إفريقية وأهلها نصارى، ولا تجاوز في الشرق خراسان وفي الشمال أذربيجان وأهلها مجوس. ومن عجائبهم التي تغيظ كل ذي عقل ودين، والتي كان يجب عليهم أن يراقبوا الله تعالى في القول بها، أو يستحيوا من تقليد من أخطأ فيها، إطباقهم على أن قول الله تعالى: {ومن يقتل مؤمنا متعمدا فجزآؤه جهنم خالدا فيها وغضب لله عليه ولعنه وأعد له عذابا عظيما} فليس يدخل فيه القاتل خطأ وأن القاتل خطأ بخلاف القاتل عمدا في ذلك، ثم أجمع الحنفيون والشافعيون والمالكيون على قول الله تعالى {يأيها لذين آمنوا لا تقتلوا لصيد وأنتم حرم ومن قتله منكم متعمدا

'Amen,' because that is not mentioned in some of the reports, even though it is mentioned in others. Here, however, what is left unmentioned takes precedence, so we say only what is mentioned in both reports." Then they said: "The poll tax is taken from people other than the People of the Book," even though Allah Most High commanded that it be taken only from the People of the Book. They attributed this to Uthman, may Allah be pleased with him. Abu Muhammed said: This is not authentically established from Uthman at all. The first to take the poll tax from people other than the People of the Book was al-Qasim ibn Muhammed al-Thaqafi, the commander serving the evildoer al-Hajjaj. He took it from the worshippers of the idol among the unbelieving inhabitants of Sind. As for Uthman, may Allah be pleased with him, he did not go beyond Ifriqiyah, whose inhabitants were Christians; nor did he go beyond Khurasan in the east or Azerbaijan in the north, whose inhabitants were Magians.

Among their astonishing positions, which enrage everyone possessed of reason and religion, and concerning which they ought to have been mindful of Allah Most High when advancing them, or ashamed to follow uncritically those who erred in them, is their unanimous agreement that the words of Allah Most High, {Whoever kills a believer deliberately, his recompense is Hell, abiding therein forever; Allah is angry with him, has cursed him, and has prepared for him a tremendous punishment}, do not include someone who kills by mistake, and that someone who kills by mistake differs in this respect from someone who kills deliberately. Then the Hanafis, Shafi'is, and Malikis unanimously agreed, concerning the words of Allah Most High, {O you who believe, do not kill game while you are in a state of ritual consecration. Whoever among you kills it deliberately, the recompense is the equivalent, in livestock, of what he killed, as judged by two just men among you, as an offering reaching the Kaaba; or an expiation consisting of feeding needy people, or its equivalent in fasting, so that he may taste the evil consequence of his deed. Allah has pardoned what is past; but whoever does it again, Allah will take vengeance upon him. Allah is mighty, possessed of vengeance}, through to the end of His words, Most High, {O you who believe, do not kill game while you are in a state of ritual consecration. Whoever

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 الله عما سلف ومن عاد فينتقم الله منه والله عزيز ذو نتقام} إلى منتهى قوله تعالى {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 الله عما سلف ومن عاد فينتقم الله منه والله عزيز ذو نتقام} فقالوا كلهم إن القاتل الصيد وهو محرم خطأ تحت هذا الحكم وهم يسمعون هذا الوعيد الشديد الذي لا يستحقه مخطىء بإجماع الأمة، فيكون في عكس الحقائق والتحكم في دين الله تعالى أعظم من هذا التلاعب في حكمين وردا بلفظ العمد، ففرقوا بينهما كما ترى؟ وحسبنا الله ونعم الوكيل

among you kills it deliberately, the recompense is the equivalent, in livestock, of what he killed, as judged by two just men among you, as an offering reaching the Kaaba; or an expiation consisting of feeding needy people, or its equivalent in fasting, so that he may taste the evil consequence of his deed. Allah has pardoned what is past; but whoever does it again, Allah will take vengeance upon him. Allah is mighty, possessed of vengeance}. They all said that someone who kills game by mistake while in a state of ritual consecration falls under this ruling, although they hear this severe threat, which someone acting by mistake does not deserve, according to the unanimous agreement of the community. Can there, then, be any inversion of realities or arbitrary ruling concerning the religion of Allah Most High greater than this playing about with two rulings, both expressed using the word "deliber-

ately," between which they have distinguished as you see? Allah is sufficient for us, and an excellent trustee is He.[101][102][103][104][105]

L2899–2901 They said: "Allah Most High mentioned: {Those among you who declare their wives prohibited by likening them to their mothers—their wives are not their mothers. Their mothers are only those who gave birth to them. They indeed utter a reprehensible saying and a falsehood. Allah is indeed pardoning, forgiving}." They then said: "We draw an analogy between someone who makes such a declaration by reference to his offense, or to something prohibited, and someone who does so by reference to his mother; and we assimilate the unmentioned case to the mentioned case." Then they said: "We do not draw an analogy between a woman's making such a declaration concerning her husband and his making it concerning her, nor do we assimilate the unmentioned case to the mentioned case." Then they said: "We

وقالوا ذكر الله تعالى {لذين يظاهرون منكم من نسآئهم ما هن أمهاتهم إن أمهاتهم إلا للائي ولدنهم وإنهم ليقولون منكرا من لقول وزورا وإن لله لعفو غفور} فقالوا نقيس من يظاهر بجريمته أو بشيء محرم على الأم، ونلحق المسكوت عنه بالمذكور. ثم قالوا: لا نقيس تظاهر المرأة من زوجها بتظاهره منها، ولا نلحق عنه بالمذكور ثم قالوا: نوجب الكفارة على المرأة الموطوءة نهارا في رمضان قياسا على الرجل الواطىء في رمضان، فيلحق المسكوت عنه بالمذكور، وقد قالوا كما ذكرنا: نلحق الرقبة المسكوت عنها في الظهار بالرقبة المذكور دينها في القتل، ثم قالوا: نوجب في التعويض من الصيام في كفارة القتل إطعاما، وإن كان قد عوض من الصيام بالإطعام في كفارة الظهار التي قسنا آنفا رقبتها على رقبة القتل، وقاس بعضهم التيمم على الوضوء، أن لا بد من بلوغ التيمم إلى المرفقين وأبوا أن يقيسوا مسح الرأس في التيمم على مسحه في الوضوء. وقالوا: الحكم المسكوت عنه بحكم المذكور ههنا، ثم لم يقيسوا قوله تعالى في الرجعة: {فإذا بلغن أجلهن فأمسكوهن بمعروف أو فارقوهن بمعروف وأشهدوا ذوي عدل منكم وأقيموا لشهادة لله ذلكم يوعظ به من كان يؤمن بالله واليوم لآخر ومن يتق لله يجعل له مخرجا} على قوله تعالى في الدين {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 لله 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

[101] **Translator's note (L2892):** The supplied text reads "the believer who is a protected non-Muslim" (al-mu'min al-dhimmi), an apparently inconsistent designation. It may contain a transcriptional error; the translation preserves both terms rather than silently removing or changing either. The singular pronoun in "made it obligatory" follows the supplied Arabic, although both blood money and expiation precede it.

[102] **Translator's note (L2893):** "Clients" renders mawālī, which can denote persons connected through patronage or allegiance. The Arabic wording of the date-palm report uses tamr, "dates," where the report is commonly worded with thamar, "fruit." The translation preserves the supplied report's meaning without replacing its wording. "Declaration of prohibited marital resemblance" renders ẓihār, the declaration comparing one's wife to a prohibited female relative. The wording lahā mā dūna al-qullatayn is syntactically awkward; the translation gives the apparent argument concerning the different ruling for water below the specified quantity. A qullah is a large jar used as a measure of volume.

[103] **Translator's note (L2896):** The source reads al-Qasim ibn Muhammed al-Thaqafi; this appears to be a name error for Muhammed ibn al-Qasim al-Thaqafi. The supplied name is retained. Al-budd can denote an idol or a Buddha image; "the idol" preserves the term's broader sense here. The game-hunting verse is quoted twice in the supplied text, with the second quotation continuing into the next unit. Both occurrences are retained, as is the awkward linking phrase "through to the end of His words."

[104] **Translator's note (L2897):** The wording fa-yakūnu is awkward in the ensuing rhetorical question; the translation follows the apparent interrogative force of the passage without altering the underlying claim.

[105] **Qur'an references (L2892):** Qur'an 33:5 (Al-Ahzab); Qur'an 4:93 (An-Nisa); Qur'an 5:95 (Al-Ma'idah).

require expiation from the woman with whom intercourse is had during the daytime in Ramadan, by analogy with the man who has intercourse in Ramadan." Thus the unmentioned case is assimilated to the mentioned case. As we have related, they also said: "We assimilate the slave whose religion is left unmentioned in the case of prohibited marital resemblance to the slave whose religion is specified in the case of killing." Then they said: "We require feeding as a substitute for fasting in the expiation for killing, even though feeding has been made a substitute for fasting in the expiation for prohibited marital resemblance, whose slave we just now analogized to the slave required for killing."

Some of them analogized dry ablution to ritual ablution, holding that dry ablution must extend to the elbows, yet refused to analogize wiping the head in dry ablution to wiping it in ritual ablution. They said: "Here, the ruling for the unmentioned case is the ruling for the mentioned case." Then they did not analogize His words, Most High, concerning taking back a divorced wife, {When they reach their appointed term, retain them honorably or part from them honorably, and call two just men from among you to witness, and uphold testimony for Allah. By this is admonished whoever believes in Allah and the Last Day. Whoever is mindful of Allah, He will make for him a way out}, to His words, Most High, concerning debt: {O you who believe, when you contract a debt for a specified 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 be mindful of Allah, his Lord, and diminish nothing of it. If the one who owes the obligation is foolish or weak, or cannot dictate himself, then let his guardian dictate with justice. Call two witnesses from among your men to witness; if there are not two men, then one man and two women from among those whom you approve as witnesses, so that if one of the two women errs, one may remind the other. Let the witnesses not refuse when they are summoned. Do not weary of writing it down, whether small or great, together with its due date. That is more equitable before Allah, more upright for testimony, and more conducive to your having no doubts—unless it is an immediate transaction that you conduct among yourselves, in which

ولا يضآر كاتب ولا شهيد وإن تفعلوا فإنه فسوق بكم وتقوا الله ويعلمكم الله والله بكل شيء عليم} فقالوا هذا لا نحكم عنه للمسكوت عنه بحكم المذكور، وقالوا هنالك: نحكم للمسكوت عنه بحكم المذكور. وأما الحنفيون فحكموا في آيتي الشهادة المسكوت عنه بحكم المذكور، فقبلوا النساء في الرجعة والطلاق والنكاح وفي آية التيمم، فأوجبوا إلى المرفقين، ولم يحكموا في رقب الظهار والقتل والكفارة للمسكوت عنه بحكم المذكور، ولا حكموا لغير السائمة بحكم السائمة، ففرقوا ههنا بين المسكوت عنه وبين المذكور، فكل طائفة منهم تحكمت في دين الله بعقولها وتقليدها الفاسد، بلا برهان. وقد احتج بعضهم علي حيث وافق هواه، بأن البدل حكمه حكم المبدل منه فأعلمته بأن ذلك باطل بلغة العرب التي خوطبنا بها في القرآن والسنة، وبحكم الشريعة، أما اللغة فإن البدل على أربعة أضرب: بدل البعض من الكل، وبدل البيان، وبدل الغلط، وبدل الصفة من الموصوف، فليس في هذه الوجوه بدل يكون حكمه حكم المبدل منه إلا بدل البيان وحده، كقولك: مررت بزيد رجل صالح على أن أحدهما نكرة الآخر معرفة،

case there is no blame upon you if you do not write it down. And take witnesses when you transact with one another. Let neither scribe nor witness be harmed; if you do so, it is wickedness on your part. Be mindful of Allah; Allah teaches you, and Allah knows all things}. They said: "Here we do not assign to the unmentioned case the ruling of the mentioned case," whereas there they said: "We assign to the unmentioned case the ruling of the mentioned case." As for the Hanafis, in the two verses concerning testimony they assigned to the unmentioned case the ruling of the mentioned case, and therefore accepted women as witnesses in taking back a divorced wife, divorce, and marriage; and in the verse concerning dry ablution, they required it to extend to the elbows. Yet concerning the slaves required for prohibited marital resemblance and killing, and concerning expiation, they did not assign to the unmentioned case the ruling of the mentioned case; nor did they assign to livestock that do not graze freely the ruling of freely grazing livestock. Here they distinguished between the unmentioned and the mentioned. Thus each group of them has ruled arbitrarily concerning the religion of Allah, using its own reasoning and its corrupt uncritical adherence, without demonstration. One of them argued against me, where it suited his desire, that a substitute has the same ruling as the thing substituted for. I informed him that this is false according to the Arabic language in which we have been addressed in the Quran and the Sunnah, and according to the ruling of the revealed Law. As for the language, substitution is of four kinds: substitution of a part for the whole; explanatory substitution; substitution correcting an error; and substitution of an attribute for the thing described. Among these kinds, there is no substitute that has the same ruling as that for which it is substituted except explanatory substitution alone, as when

you say, “I passed by Zayd, a righteous man,” even though one of the two is indefinite and the other definite.[106][107][108][109]

L2902–2905 As for the Quran, Allah Most High has substituted fasting for three days for freeing a slave as expiation, and fasting for two consecutive months for freeing a slave on account of the declaration that one’s wife is forbidden as one’s mother. He has substituted feeding ten needy people for freeing a slave as expiation, and fasting for three days for feeding those ten. He has substituted feeding sixty needy people for fasting for the two months. The Most High has substituted fasting for ten days for the sacrificial offering associated with combining the lesser and greater pilgrimages, and fasting for three days for the sacrificial offering on account of an ailment. Thus their claim is invalid.

A group of them said concerning his statement—may Allah bless him and grant him peace ﷺ—“Whoever touches his private part must perform ablution”: “Ablution is invalidated only by someone who touches it with the inside of his hand, rather than its back.” Thus they did not apply the ruling here to everything to which the term “touching” applies. They then argued

وأما القرآن فقد أبدل الله تعالى من عتق رقبة الكفارة، صيام ثلاثة أيام، ومن عتق رقبة الظهار صيام شهرين متتابعين، وأبدل من عتق رقبة الكفارة إطعام عشرة مساكين، ومن هؤلاء العشرة صيام ثلاثة أيام، وأبدل من صيام الشهرين إطعام ستين مسكينا، وأبدل تعالى من هدي المتعة صيام عشرة أيام، ومن هدي الأذى صيام ثلاثة أيام فبطل ما ادعوه وقالت طائفة منهم في قوله صلى الله عليه وسلم من مس فرجه فليتوضأ لا ينقض الوضوء إلا من مسة بباطن يده دون ظاهرها، فلم يحكموا في ذلك بكل ما يقع عليه اسم مس. ثم قالوا في ذلك بحديث لا يصح فيه: من أفضى بيده إلى فرجه فليتوضأ. قال أبو محمد: ولو صح لما كان مانعا من إيجاب الوضوء في مسه بغير اليد، لأنه إنما يكون في هذه الرواية التي احتجوا بها ذكر الإفضاء باليد فقط، وكان يكون في الحديث الآخر المس جملة كما لم يكن في قوله صلى الله عليه وسلم من مس فرجه فليتوضأ ما يوجب إسقاط الوضوء من الريح والغائط، بل كان مضافا إليه ومجموعا معه. ثم نقضوا هذا فقالوا في حديثين وردا: أحدهما: إذا وقعت الحدود فلا شفعة والآخر: إذا وقعت الحدود وصرفت الطرق فلا شفعة فاستعملوا كلا اللفظين ولم يجعلوهما حديثا واحدا، بل أوجبوا قطع الشفعة بتحديد الحدود وإن لم تصرف الطرق، وقالوا: نعم إذا حدث الحدود فلا شفعة وإذا زيد في ذلك فصرفت الطرق فلا شفعة أيضا. قال أبو محمد: ولم يفعل ذلك الحنفيون ههنا ولكنهم قد نقضوه فيما ذكرنا آنفا من مس الفرج، ونقضه بعضهم في حديثين رويا عن رسول الله صلى الله عليه وسلم في أحدهما أنه عليه السلام مسح بناصيته وفي الآخر: أنه مسح على العمامة فقالوا: هذا حديث واحد، ولا يجزىء المسح على العمامة دون الناصية. قال أبو محمد: وهذا خلاف ما فعلوا في الشفعة مع أن كون الحديث الذي فيه ذكر الناصية غير

[106] **Translator’s note (L2899):** The reading bi-jarīmatihi literally means “by reference to his offense” and is obscure in this discussion of prohibited marital resemblance. It may be corrupt; it has not been silently replaced with a conjectured reference to a female relative. In “nor do we assimilate the unmentioned case,” the supplied Arabic has an incomplete expression, wa-lā nulḥiqu ʿanhu, apparently missing the designation of what is left unmentioned. The source affirmatively says “We require feeding” in the expiation for killing. This appears inconsistent with the surrounding polemic and may lack a negation; the affirmative wording is retained. The statement about the ruling of the unmentioned case is syntactically compressed in the source; the translation supplies its apparent grammatical connection.

[107] **Translator’s note (L2900):** The phrase hādhā lā naḥkumu ʿanhu contains an awkward extra pronoun; the translation follows the evident contrast between the two treatments of unmentioned cases. The unvocalized prohibition concerning harm to a scribe or witness can also be understood as prohibiting the scribe or witness from causing harm.

[108] **Translator’s note (L2901):** “Substitution” here renders the grammatical term badal, an appositional construction, as the author examines the linguistic claim underlying the legal argument. The classification “substitution of an attribute for the thing described” is retained as supplied.

[109] **Qur’an references (L2899):** Qur’an 58:2 (Al-Mujadila); Qur’an 65:2 (At-Talaq); Qur’an 2:282 (Al-Baqarah).

الحديث الذي فيه ذكر العمامة، أبين من أن يحتاج فيه كلفة، لأن راوي الناصية المغيرة بن شعبة، وراوي العمامة فقط بلال وعمرو بن أبي أمية الضمري معا، فمن ادعى أنهما حديث واحد فقد افترى وقفا ما ليس له به علم، وذلك لا يحل وقد كان ينبغي لهم أن يحكموا المسكوت عنه من المسح على الرأس المستور، بحكمهم على الرجلين المستورين كما حكموا بالمسح على الجرموقين قياسا على الخفين، وكما قاسوا المسح على الجبائر في الذراعين على المسح على الخفين في الرجلين، والجبائر لم يأت ذكرها في نص صحيح أصلا، وإذا جاز عندهم تعويض المسح عليها من غسل الذراعين فتعويض المسح على العمامة من مسح الرأس أولى، لأن هذا مسح عوض من مسح، وذلك مسح عوض من غسل، وكان قياس الرأس على الرجلين، لأنهما طرفا الجسد، ولأنهما جميعا يسقطان في التيمم: أولى من قياس الذراعين بالجبائر على الرجلين، ولكن القوم ليسوا في شيء، وإنما يقولون ما خرج إلى أفواههم دون تعقب، وقلدهم من تلاهم

for this on the basis of an inauthentic report containing the words, "Whoever brings his hand into direct contact with his private part must perform ablution."

Abu Muhammed said: Even if it were authentic, it would not preclude requiring ablution for touching it with something other than the hand. This narration on which they relied would mention only direct contact with the hand, while the other report would speak of touching without qualification. Likewise, his statement—may Allah bless him and grant him peace ﷺ—"Whoever touches his private part must perform ablution" contains nothing requiring that ablution on account of passing wind or defecation be dispensed with. Rather, this would be added to it and combined with it. They then contradicted this position in discussing two transmitted reports, one of which says, "When the boundaries have been established, there is no right of pre-emption," while the other says, "When the boundaries have been established and the roads laid out, there is no right of pre-emption." They applied both wordings and did not treat them as a single report. Rather, they held that establishing boundaries necessarily terminates the right of pre-emption, even if the roads have not been laid out. They said: "Yes, when the boundaries have been established, there is no right of pre-emption; and when something is added to this, so that the roads are laid out, there is likewise no right of pre-emption."

Abu Muhammed said: The Hanafis did not do this here, but they have contradicted this principle in what we mentioned just now concerning touching the private part. Some of them contradicted it concerning two reports narrated from the Messenger of Allah—may Allah bless him and grant him peace ﷺ—in one of which he, peace be upon him, wiped his forelock, and in the other of which he wiped over his turban. They said: "This is a single report, and wiping over the turban without wiping the forelock does not suffice."

Abu Muhammed said: This conflicts with what they did concerning pre-emption. Moreover, the fact that the report mentioning the forelock is distinct from the report mentioning the turban is too obvious to require any effort to establish: the narrator of the forelock report is al-Mughirah ibn Shuʿbah, whereas the narrators of the report mentioning only the turban are

Bilal and ʿAmr ibn Abi Umayyah al-Damri, both of them. Whoever claims that these are a single report has fabricated a falsehood and pursued something of which he has no knowledge, and that is unlawful. They ought to have applied to the unaddressed matter of wiping over a covered head the ruling they apply to covered feet, just as they ruled that one may wipe over outer boots by analogy with leather socks, and just as they analogized wiping over splints on the forearms to wiping over leather socks on the feet, although splints have never been mentioned in any authentic text at all. If they consider it permissible to substitute wiping over them for washing the forearms, then substituting wiping over the turban for wiping the head is more appropriate: the latter substitutes wiping for wiping, whereas the former substitutes wiping for washing. Analogizing the head to the feet, because they are the two extremities of the body and because both are omitted in dry ablution, would have been more appropriate than analogizing the forearms with their splints to the feet. But these people have no basis whatsoever: they merely say whatever comes to their mouths without examining it, and those who came after them followed them uncritically.[110][111][112]

L2906–2909 They turned to the statement of the Most High, "O you who believe, retaliation is prescribed for you concerning those killed: the free person for the free person, the slave for the slave, and the female for the female. But whoever is pardoned anything by his brother, then there must be pursuit according to what is right and payment to him with goodness. That is an alleviation from your Lord and a mercy. Whoever transgresses after that shall have a painful punishment." They contradicted themselves, saying: "This verse requires that a free person not be killed in retaliation for a slave, but it does

وأتوا إلى قوله تعالى {يأيها لذين آمنوا كتب عليكم لقصاص في لقتلى لحر بالحر ولعبد بلعبد ولأنثى بلأنثى فمن عفي له من أخيه شيء فتباع بلمعروف وأدآء إليه بإحسان ذلك تخفيف من ربكم ورحمة فمن عتدى بعد ذلك فله عذاب أليم} فتناقضوا فقالوا: هذه الآية موجبة أنه لا يقتل الحر بالعبد وليست موجبة ألا يقتل الذكر بالأنثى، أفيكون أقبح تحكما ممن يقول إن قوله تعالى {لحر بالحر} موجب ألا يقتل حر بعبد ويقولون إن قوله تعالى {ولأنثى بلأنثى} موجبا ألا تقتل الأنثى بالذكر والذكر بالأنثى وأما نحن فإن قوله صلى الله عليه وسلم المؤمنون تتكافأ دماؤهم عموم موجب عندنا قتل الحر بالعبد والعبد بالحر، والذكر بالأنثى والأنثى بالذكر، وكذلك قوله تعالى: {وجزآء سيئة سيئة مثلها فمن عفا وأصلح فأجره على لله إنه لا يحب لظالمين} موجب القصاص بين الحر والعبد والذكر والأنثى، فيما دون النفس، يقص فيه للحر من العبد، وللعبد من الحر، والإماء والحرائر فيما بينهن، ومع الرجال كذلك ولا قصاص لكافر من مؤمن

[110] **Translator's note (L2902):** The opening reference to fasting for three days as a substitute for freeing a slave in expiation is reproduced as supplied; the kind of expiation is not specified. The declaration translated as making one's wife forbidden as one's mother is the technical legal category ẓihār. The pilgrimage arrangement is tamattuʿ.

[111] **Translator's note (L2903):** The wording إذا حدث الحدود is awkward as supplied; the surrounding repeated wording supports the sense "when the boundaries have been established."

[112] **Translator's note (L2904):** "Outer boots" renders jurmūqayn, footwear worn over leather socks; "leather socks" renders khuffayn.

not require that a male not be killed in retaliation for a female." Could there be more outrageous arbitrariness than that of someone who says that the statement of the Most High, "The free person for the free person," requires that no free person be killed in retaliation for a slave, while they say that His statement, "And the female for the female," requires that a female not be killed in retaliation for a male, nor a male for a female?

As for us, his statement—may Allah bless him and grant him peace ﷺ—"Believers' blood is of equal worth" is a general expression that, in our view, requires killing a free person in retaliation for a slave, a slave for a free person, a male for a female, and a female for a male. Likewise, the statement of the Most High, "The recompense of an evil deed is an evil deed like it; but whoever pardons and effects reconciliation, his reward rests with Allah. He does not love wrongdoers," requires retaliation between free persons and slaves, and males and females, for injuries short of taking life. Retaliation is exacted for a free person against a slave, and for a slave against a free person; the same applies to slave women and free women among themselves and in relation to men. No retaliation whatsoever is exacted for an unbeliever against a believer, on account of other texts which this is not the place to mention.

Some of them said: His statement, Most High, "Say: I find nothing in what has been revealed to me forbidden to an eater who eats it, unless it be carrion, or blood poured forth, or the flesh of swine—for it is unclean—or an act of wickedness over which a name other than Allah's has been invoked. But whoever is compelled, neither seeking it nor transgressing, then your Lord is forgiving, merciful," indicates that blood which is poured forth is not forbidden.

Abu Muhammed said: They have forgotten themselves concerning this verse. For if mentioning blood poured forth requires that blood not poured forth be permissible, then mentioning the flesh of swine in the verse itself must require that its skin and hair be permissible. They do not say this, so they have contradicted themselves. If they claim consensus, they lie, because many jurists permit selling its skin and making use of it once it has been tanned, and stitching with its hair. This is a contradiction not so remote from them that

أصلا، لنصوص أخر ليس هذا مكان ذكرها. وقال بعضهم: قوله تعالى: {قل لا أجد في مآ أوحي إلي محرما على طاعم يطعمه إلا أن يكون ميتة أو دما مسفوحا أو لحم خنزير فإنه رجس أو فسقا أهل لغير الله به فمن ضطر غير باغ ولا عاد فإن ربك غفور رحيم} يدل على أن الدم الذي يكون مسفوحا ليس حراما. قال أبو محمد: وهم قد نسوا أنفسهم في هذه الآية، لأنه إذا كان ذكر المسفوح موجبا أن يكون غير المسفوح مباحا، فوجب أن يكون ذكر لحم الخنزير في الآية نفسها، موجبا إباحة جلده، وشعره، وهم لا يقولون هذا، فقد تناقضوا، فإن ادعوا إجماعا كذبوا، لأن كثيرا من الفقهاء يبيحون بيع جلده، والانتفاع به إذا دبغ والخرز بشعره، فهذا تناقض لم يبعد عنهم فينسوه. وأيضا فإن قوله تعالى في سورة المائدة في آية منها من آخر ما نزل {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 واخشون اليوم أكملت لكم دينكم وأتممت عليكم نعمتي ورضيت لكم لأسلام دينا فمن ضطر في مخمصة غير متجانف لإثم فإن لله غفور رحيم} مبين أن كل دم فهو حرام ويدخل في ذلك المسفوح وغير المسفوح وهذا بين وبالله تعالى التوفيق

they could have forgotten it. Moreover, His statement, Most High, in Surat al-Ma'idah, in a verse of it that was among the last to be revealed, "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 that has fallen to its death, the animal gored to death, and that which a beast of prey has eaten—except what you duly slaughter—and what has been sacrificed on stone altars, and that you seek apportionment by divining arrows. That is wickedness. 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 all blood is forbidden, including both blood poured forth and blood not poured forth. This is clear, and success comes through Allah Most High.[113][114][115]

[113] **Translator's note (L2906):** The rhetorical question contains an apparent textual error: the supplied wording says that "the female for the female" requires that neither sex be killed in retaliation for the other, although the preceding sentence says the opponents do not infer that exclusion. The positive "requires" has been retained rather than silently changed to "does not require."

[114] **Translator's note (L2907):** The supplied text explicitly says that blood "which is poured forth" is not forbidden. This appears to be missing a negative: the ensuing argument concerns blood that is not poured forth. The supplied reading is retained.

[115] **Qur'an references (L2906):** Qur'an 2:178 (Al-Baqarah); Qur'an 42:40 (Ash-Shuraa); Qur'an 6:145 (Al-An'am); Qur'an 5:3 (Al-Ma'idah).